



PUBLISHED BY AUTHORITY

No. 5] NEW DELHI, SATURDAY, FEBRUARY 3, 1951

NOTICE

The undermentioned Gazettes of India Extraordinary were issued during the week ending the 31st January 1951 :—

S. No.	No. & Date	Issued by	Subject
1	S. R. O. 99, dated the 20th January 1951.	Central Board of Revenue.	Prohibition of discharge and shipping of cargo on Friday the 26th January 1951.
2	S. R. O. 100, dated the 22nd January 1951.	Ministry of Food.	Foodstuffs specified shall be exercisable by certain Officers in the State of Punjab with immediate effect.
3	S. R. O. 101, dated the 23rd January 1951.	Ministry of Agriculture.	Amendments regarding Sugar and Gur Control Order, 1950.
4	S. R. O. 130, dated the 23rd January 1951.	Ministry of Industry and Supply.	Further amendments made in the Textile Commissioner's Notification No. 9(9) Tex. 1/49 (ii), dated the 19th March 1949.
5	S. R. O. 131, dated the 27th January 1951.	Ministry of Labour.	A dispute for adjudication to the Industrial Tribunal, Dhanbad.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

MINISTRY OF HOME AFFAIRS

New Delhi, the 29th January 1951

S.R.O. 133.—In exercise of the powers conferred by section 27 of the Indian Arms Act, 1878 (XI of 1878), the Central Government is pleased to exempt His Majesty the King of Nepal from the operation of the prohibitions and directions contained in sections 13, 14 and 15 of the said Act in respect of one .32 bore Spanish pistol.

[No. 9/81/50-Police-I.]

U. K. GHOSHAL, Dy. Secy.

New Delhi, the 29th January 1951

S.R.O. 134.—In exercise of the powers conferred by clause (1) of article 260 of the Constitution, the Central Government is pleased, to entrust to the Government of Madras, with their consent, the functions of the Central Government under the Land Acquisition Act, 1894 (I of 1894), in relation to acquisitions of land for the purposes of the Union.

[No. 123/50-Judl.]

E. C. GAYNOR, Dy. Secy.

MINISTRY OF STATES

New Delhi, the 24th January 1951

S.R.O. 135.—In exercise of the powers conferred by section 5 of the Delhi Special Police Establishment Act, 1946 (XXV of 1946), the Central Government hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the States of Bhopal, Bilaspur, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh for the investigation of classes of offences specified in the notification as for the time being in force, of the Government of India in the Ministry of Home Affairs No. 38/3/48.S.P.E., dated 3rd June 1948 under section 3 of the said Act.

[No. 16-I.]

A. N. SACHDEV, Under Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

OPIMUM

New Delhi, the 25th January 1951

S.R.O. 136.—In pursuance of Clause (a) of rule 2 of the Central Opium Rules, 1934, the Central Government hereby defines the tracts in Madhya Bharat and Rajasthan, specified in the Schedule appended hereto, as the tracts within which poppy may be cultivated on account of Government during the year ending the 30th September, 1951.

SCHEDULE

Districts	Tehsils
<i>Madhya Bharat.</i>	
Mandsaur.	Mandsaur, Malhargarh, Neemuch, Jawad, Sitamau, Manasa, Bhanpura, Garoth.
Ratlam.	Ratlam, Alot, Sailana, Jaora.
Shajapur.	Agar, Susner.
<i>Rajasthan.</i>	
Kotah.	Cheepabarod, Chhabra, Ramgunjmandi, Chechut, Atru, Baran, Antah, Sangod.
Jhalawar.	Aklara, Khanpur, Jhalar, Patan (including Asnawar), Pacha Pahar (including Bhawani Mandi), Dag (including Awar), Gangdhar, Pirawa, Ba-Kani, Mahohar Thana.
Chittorgarh.	Chittorgarh, Nimbahera, Partabgarh, Dungla, Kunera, Chhoti Sadri, Begun, Gangrar, Kapasin, Rashmi Bari Sadri, Achnera, Bhadesar.
Bhilwara.	Bijolia.

[No. 1.]

D. P. ANAND, Dy. Secy.

New Delhi, the 27th January 1951

S.R.O. 137.—In pursuance of clause (a) of rule 2 of the Central Opium Rules, 1934, the Central Government hereby defines the tracts in the Uttar Pradesh, specified in the Schedule appended hereto, as the tracts within which poppy may be cultivated on account of Government during the year ending the 30th September, 1951.

SCHEDULE

Districts	Parganas
Ghaziपुर.	Mohammadabad, Zamania, Dehna, Zahurabad, Shadiabad, Ghazipur, Bahariabad, Pachotar, Kopachit West, Kopachit East, Saidpur, Barah.
Banaras.	Mahaich.
Azamgarh.	Chiraiyakot, Qariyat, Belha, Atraulia, Sagri, Ghosi, Mohammadabad, Nathoopur.
Ballia.	Sikandarpur East, Sikandarpur West, Bhadsan, Ballia, Kharid, Kopachit West, Kopachit East, Lakhneshwar.
Gorakhpur.	Chillupar, Bhauwapar, Unaola, Dhuriapar.
Deoria.	Sidhua Jobna, Sylhet, Salempur.
Gonda.	Paharapur, Gwarich, Digsir, Nawabganj, Mahadeva, Gonda, Mankapur, Sadullahnagar, Balrampur, Utraula, Buhapar.
Faizabad.	Magalsi, Khandasa, Rath.
Basti.	Amorha.
Bara Banki.	Ramnagar, Baddusarai, Rudauli, Nawabganj, Partabganj, Satrik, Siddhaur, Haidergarh, Subcha, Daryabad, Dewa.
Barilly.	Saneha, Ballia, Aonla, Faridpur, Surauli.
Shahjahanpur.	Tilhar, Nigohi, Kant, Khera Bajhora, Jalalabad.

[No. 2.]

A. V. VENKATESWARAN, Dy. Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 29th January 1951

S.R.O. 138.—In pursuance of sub-section (4) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), and in partial modification of its Notification No.32-Income-tax, dated the 9th November 1946, the Central Board of Revenue directs that the Appellate Assistant Commissioner of Income-tax, 'L' Range, Bombay shall also and the Appellate Assistant Commissioner of Income-tax, 'F' Range, Bombay shall not perform his functions in respect of Messrs. Govindram Seksaria of Bombay for the appeal against their assessment for the year 1941-42.

[No. 9]

PYARE LAL, Secretary.

MINISTRY OF INDUSTRY AND SUPPLY

New Delhi, the 29th January 1951

S.R.O. 139.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following further amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-4(41), dated the 7th September 1950, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76).]

S.R.O. 140.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following further amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-1(530)/D, dated the 26th May, 1948, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/A.]

S.R.O. 141.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following further amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-1(699)/48-B, dated the 16th August 1948, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/B.]

S.R.O. 142.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following further amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-1(106), dated the 8th March, 1948, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/C.]

S.R.O. 143.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order, 1943, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-4(78) A, dated the 6th January, 1951, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/D.]

S.R.O. 144.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order, 1943, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-4(78)/B, dated the 6th January, 1951, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/E.]

S.R.O. 145.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order, 1943, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India in the Ministry of Industry and Supply, No. I(1)-4(78)C, dated the 6th January, 1951, namely:—

To the Schedule annexed to the said Notification, the following entry shall be added, namely:—

“Iron and Steel Controller, Government of Hyderabad, Khairatabad.”

[No. I(1)-4(76)/F.]

N. R. REDDY, Under Secy.

MINISTRY OF AGRICULTURE

New Delhi, the 24th January, 1951

S.R.O. 146.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government hereby directs that the following further amendment shall be made in the Fruit Products Order, 1948, namely:—

In the said Order, in sub-clause (2) of clause 1, for the words “Part B States” the words “the State of Jammu and Kashmir” shall be substituted.

[No. F.7-34/49-Fr.]

V. S. KRISHNASWAMI, Dy. Secy.

New Delhi, the 29th January 1951

S.R.O. 147.—In exercise of the powers conferred by clause 8 of the Sugar and Gur Control Order, 1950, the Central Government is pleased to direct:—

- (a) that all sugar manufactured by vacuum pan process shall be sold by a producer packed in new A Twill jute bags, unless otherwise permitted by the Central Government, and each bag shall contain 2 maunds and 30 seers sugar net (a maund being of 82.2/7 lbs.);
- (b) that each such bag shall bear on it the name of the producer and the quality of sugar, at the time of delivery, in terms of the Indian Sugar Standards; and
- (c) that the producer shall state in the sale invoice that the price charged for the sugar is the ex-factory price, as notified by the Central Government of the grade of sugar actually delivered and marked on the bag in which it is packed.

This Notification will come into force at once.

[No. SV-105(4)/50-51.]

N. T. MONE, Joint Secy.

MINISTRY OF REHABILITATION

Delhi, the 30th January 1951

S.R.O. 148.—In exercise of the powers conferred by section 16 of the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), the Central Government is pleased to direct that the following amendment shall be made in the Displaced Persons' (Registration of Claims) Rules, 1950:—

In the proviso the sub-rule (1) of rule 3 of the said rules, after clause (iii) the following clause shall be inserted, namely:—

- “(iv) The Chief Claims Commissioner may in any particular case condone the delay in the submission of a claim for registration.”

[No. 1(1)/CCC/G-50.]

S. B. CAPOOR, Joint Chief Claims Commissioner and Joint Secy.

MINISTRY OF TRANSPORT**PORTS***New Delhi, the 23rd January 1951*

S.R.O. 149.—In exercise of the powers conferred by clauses (b) and (e) (2) of section 5 and section 6 of the Bombay Landing and Wharfage Fees Act, 1882 (Bombay Act VII of 1882), as applied to the Port of Kandla by the notification of the Government of India in the Ministry of Transport No. 14-P(89)/49.I, dated the 29th June 1950, the Central Government hereby declares the Timber Jetty at the said Port as a public landing-place to which the provisions of the said Act shall apply and further directs that a fee of one annas per passenger embarking or disembarking at the said Jetty shall be levied by the Development Commissioner, Kandla.

[No. 14-P(35)/50.]

J. K. ATAL, Dy. Secy.

MINISTRY OF COMMERCE**IMPORT TRADE CONTROL***New Delhi, the 24th January 1951*

S.R.O. 150.—In pursuance of the Notification of the Government of India in the late Department of Commerce No. 23-ITC/43, dated the 1st July, 1948, as continued in force by the Imports and Exports (Control) Act, 1947 (XVIII of 1947), the Central Government is pleased to direct that the following further amendment shall be made in the Open General Licence No. XXI published with the Notification of the Government of India in the Ministry of Commerce No. 53-ITC/50, dated the 25th November, 1950 as subsequently amended, and that this amendment be published for general information:—

In Schedule 'A' of the said Open General Licence against Serial Number 20(1) of Part II of the Import Trade Control Schedule the words: "Tools tipped with tungsten carbide and tungsten carbide tips" shall be substituted for the existing words "Tools tipped with tungsten carbide".

[No. 2-ITC/51.]

J. R. PRINGLE, Joint Secy.

CENTRAL TEA BOARD*New Delhi, the 3rd February 1951*

S.R.O. 151.—The following draft of certain rules which it is proposed to make in exercise of the powers conferred by section 15 of the Central Tea Board Act, 1949 (XIII of 1949), is published as required by sub-section (1) of the said section for the information of all persons likely to be affected thereby, and notice is hereby given that the draft will be taken into consideration on or after the 22nd day of February 1951.

Any objection or suggestion which may be received from any person with respect to the draft rules before the said date will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Central Tea Board (Statistics of Tea Exports to the United Kingdom) Rules, 1951.

2. (1) All dealers, growers and manufacturers shall submit to the Chairman, Central Tea Board, not later than the 15th of each month, in the form prescribed in Appendix 1 to these Rules, monthly returns of their exports to the United Kingdom of teas of each calendar year, other than those sold through the medium of tea auctions in India.

(2) All exporters of tea to the United Kingdom other than those covered by sub-rule (1) shall also submit monthly returns of their exports of teas to the United Kingdom in the manner prescribed in sub-rule (1)

Explanation:—Monthly returns during each month of a calendar year, shall be submitted by all persons who have exported teas, other than teas purchased

through the medium of tea auctions in India to the United Kingdom, in any one month. A 'nil' return shall be sent when no tea is exported.

APPENDIX I

Monthly return under Rule 2 of the Central Tea Board (Statistics of Tea Exports to the United Kingdom) Rules, 1951.

Month	Year	Exporter's name and address
		Crop of the year
	195	195 . 195 .
(1) Quantity reported in previous return	}	lbs.
(2) Quantity exported in month under review :		
by S. S.		lbs.
S. S.		lbs.
S. S.		lbs
etc., etc.		
(3) Total exports during calendar year upto end of month under review		lbs.
(4) of which exported to the London Auctions		lbs.

Date.....

Signature of Exporter or of
his Authorised Agent.

This form should reach the Chairman, Central Tea Board, 27 & 29, Brabourne Road, Calcutta 1, not later than the 15th day of the month following the month under review.

[No. 75(43)-Law(Tea)/50.]

K. P. MATHRANI, Dy. Secy.

MINISTRY OF WORKS, MINES AND POWER

New Delhi, the 24th January 1951

S.R.O. 152.—The following draft of further amendments to the Petroleum Rules, 1937, which it is proposed to make in exercise of the powers conferred by section 4, sub-section (2) of section 5, sub-section (2) of section 14, sections 21 and 22 and sub-section (1) of section 29 of the Petroleum Act, 1934 (XXX of 1934), is published as required by sub-section (2) of section 29 of the said Act for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st March 1951. Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

In the said Rules—

(a) Rule 1 shall be renumbered as sub-rule (1) of that rule and after the sub-rule as so renumbered the following sub-rule shall be added, namely:—

“(2) They extend to the whole of India except Part B States.”

(b) After rule 2, the following rule shall be inserted, namely —

"2A Special provision for merged territories—If the Chief Inspector considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty that may arise as a result of the extension of these rules to merged territories the Chief Inspector may, by general or special order, permit any licence to be granted or anything to be done which is not in conformity with these rules but which was permitted to be granted or done by or under any rule in force immediately before the coming into force of these rules in such merged territory

Provided that no order so made shall have effect after the 31st day of December 1952",

(c) in rule 3, after the definition of the term "Installation" in clause "(h)", the following definition shall be inserted, namely —

"(hh) 'merged territories' has the meaning assigned to it in the General Clauses Act, 1897."

(d) to sub-rule (2) of rule 113, the following proviso shall be added, namely —

"Provided that in the case of a merged territory every licence in force on the 31st March 1951 shall continue to remain in force till the 31st December 1951"

[No MII-104(1).]

S.R.O. 153.—The following draft of a further amendment to the Gas Cylinders Rules, 1940, which it is proposed to make in exercise of the powers conferred by sections 5 and 7 of the Indian Explosives Act, 1884 (IV of 1884), is published as required by section 18, of the said Act for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st March 1951

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

Rule I of the said Rules shall be renumbered as sub-rule (1) of that rule and after the sub-rule as so renumbered the following sub-rule shall be added, namely —

"(2) They extend to the whole of India except Part B States"

[No MII-104(2).]

S.R.O. 154.—In exercise of the powers conferred by sub-section (1) of section 30 of the Petroleum Act, 1934 (XXX of 1934), the Central Government hereby applies to Cinematograph Films having a nitro cellulose base the provisions of sections 2 to 4, 12 to 14, 23 to 29 and Section 31 of the said Act in all the merged territories as defined in the General Clauses Act, 1897 (X of 1897)

[No MII-104(3).]

S.R.O. 155—In exercise of the powers conferred by sub-section (1) of section 30 of the Petroleum Act, 1934 (XXX of 1934), the Central Government hereby applies to Carbide of Calcium the provisions of sections 2 to 4, 12 to 14, 23 to 29 and section 31 of the said Act in all the merged territories as defined in the General Clauses Act, 1897 (X of 1897)

[No MII-104(4).]

S.R.O. 156.—In exercise of the powers conferred by sub-section (1) of section 30 of the Petroleum Act, 1934 (XXX of 1934), the Central Government hereby applies to Calcium Phosphide the provisions of sections 2 to 4, 12 to 14, 23 to 29 and section 31 of the said Act in all the merged territories as defined in the General Clauses Act, 1897 (X of 1897)

[No MII-104(5).]

S.R.O. 157—The following draft of further amendments to the Cinematograph Film Rules, 1948 which it is proposed to make in exercise of the powers conferred by section 4 and sub-section (1) of section 29 of the Petroleum Act, 1934 (XXX of 1934), is published as required by sub-section (2) of section 29 of the said Act for information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 31st March 1951. Any objection or suggestion which may be received from any person with respect

to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

In the said Rules—

(a) Rule 1 shall be renumbered as sub-rule (1) of that rule and after the sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:—

“(2) They extend to the whole of India except Part B States.”

(b) after rule 2, the following rule shall be inserted, namely:—

“2A. *Special provision for merged territories.*—If the Chief Inspector considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty that may arise as a result of the extension of these rules to merged territories the Chief Inspector may, by general or special order, permit any licence to be granted or anything to be done which is not in conformity with these rules but which was permitted to be granted or done by or under any rule in force immediately before the coming into force of these rules in such merged territory.

Provided that no order so made shall have effect after the 31st day of December 1952.”;

(c) in rule 3, after the definition of the term “Inspector” in clause (i) the following definition as clause (j) shall be inserted, namely:—

“(j) ‘merged territories’ has the meaning assigned to it in the General Clauses Act, 1897,” and the remaining clauses shall be re-lettered as ‘(k)’, ‘(l)’, ‘(m)’, ‘(n)’, ‘(o)’ and ‘(p)’ respectively.

(d) after sub-rule (ii) of rule 33, the following proviso shall be inserted, namely:—

“Provided that in the case of a merged territory every licence in force on the 31st March 1951, shall continue to remain in force till the 31st December 1951.”

[No. MII-104(6).]

S.R.O. 158.—The following draft of further amendments to the Carbide of Calcium Rules 1937, which it is proposed to make in exercise of the powers conferred by section 4 and sub-section (1) of section 29 of the Petroleum Act, 1934 (XXX of 1934), as applied to Carbide of Calcium by the notification of the Government of India in the late Department of Industries & Labour No. M-826(1), dated the 15th October 1936, is published as required by sub-section (2) of section 29 of the said Act for information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after 31st March 1951. Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government:—

Draft Amendments

In the said Rules—

(a) For sub-rule (2) of rule 1, the following sub-rule shall be substituted, namely:—

“(ii) They shall apply to the whole of India, except Part B States.”

(b) after rule 2, the following rule shall be inserted, namely:—

“2A. *Special provision for merged territories.*—If the Chief Inspector considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty that may arise as a result of the extension of these rules to merged territories the Chief Inspector may, by general or special order, permit any licence to be granted or anything to be done which is not in conformity with these rules but which was permitted to be granted or done by or under any rule in force immediately before the coming into force of these rules in such merged territory.

Provided that no order so made shall have effect after the 31st day of December 1952.”;

(c) in rule 3, after the definition of the term “Inspector”, the following definition shall be inserted, namely:—

“(h) ‘merged territories’ has the meaning assigned to it in the General Clauses Act, 1897.”

(d) after sub-rule 2 of rule 39, the following proviso shall be inserted, namely:—

“Provided that in the case of a merged territory every licence in force on the 31st March 1951, shall continue to remain in force till the 31st December 1951.”

[No. MII-104(7).]

S.R.O. 159.—The following draft of a further amendment to the Explosives Rules, 1940 which it is proposed to make in exercise of the powers conferred by sections 5 and 7 of the Indian Explosives Act, 1884 (IV of 1884), is published as required by section 18 of the said Act for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st March 1951.

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government:—

Draft Amendment

In the said Rules—

(a) for sub-rule (2) of rule 1, the following sub-rule shall be substituted, namely:—

“(2). They extend to the whole of India except Part B States.”

(b) For Rule 2A, the following rule shall be substituted, namely:—

“2A. *Special provision for merged territories.*—If the Chief Inspector considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty that may arise as a result of the extension of these rules to merged territories the Chief Inspector may, by general or special order, permit any licence to be granted or anything to be done which is not in conformity with these rules but which was permitted to be granted or done by or under any rule in force immediately before the coming into force of these rules in any such merged territory:

Provided that no order so made shall have effect after the 31st day of March, 1952.”

(c) for the definitions of the terms ‘merged State’ and ‘New Province’ the following definition shall be substituted, namely:—

“merged territories” with its grammatical variations has the meaning assigned to it in the General Clauses Act, 1897, (X of 1897).

(d) in the second proviso to sub-rule (2) of rule 85, for the words ‘merged state’ or ‘New Province’ the words “merged territory” shall be substituted.

[No. MII-104(10).]

M. MALHOTRA, Under Secy.

MINISTRY OF LABOUR

New Delhi, the 24th January 1951

S.R.O. 160.—In exercise of the powers conferred by section 10 of the Coal Mines Labour Welfare Fund Act, 1947 (XXXII of 1947), the Central Government hereby directs that the following amendment shall be made in the Coal Mines Labour Welfare Fund Rules, 1949, the same having been previously published as required by sub-section (1) of the said section, namely:—

In rule 25 the following words shall be omitted, namely:—

“and the salaries and allowances of the officers and staff employed by the Fund”.

[No. M-1(6)50.]

New Delhi, the 30th January 1951

S.R.O. 161.—The following draft of certain amendments to the Minimum Wages (Central) Rules, 1950, which it is proposed to make in exercise of the powers conferred by section 30 of the Minimum Wages Act, 1948 (XI of 1948), is published, as required by the said section, for the information of persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 28th February 1951.

Any objection or suggestion which may be received from any person with respect to the said draft will be considered by the Central Government.

Amendments

In the said Rules:—

(i) In clause (i) of sub-rule (1) of rule 21, the words “on working day” shall be inserted after the words “shall be paid”.

(ii) To rule 24 the following shall be added:—

“(5) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948”

(iii) To rule 25 the following shall be added:—

“(3) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948”.

[No. LWI-24(16).]

P. N. SHARMA, Under Secy.

New Delhi, the 30th January 1951

S.R.O. 162.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following awards of the Industrial Tribunal, Calcutta, in the industrial dispute between the General Assurance Society, Limited, Calcutta, and its workmen in the General Department.

AWARD I

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

6 ESPLANADE EAST, CALCUTTA-1,

Reference No. 166 of 1950.

Before Shri K. S. Cambell-Puri, B.A., LL.B., Chairman.

PARTIES

The Employees in the General Department of the General Assurance Society Ltd.,
Calcutta

AND

Their said Employers.

APPEARANCES

Shri S. C. Sen and Shri Panna Lal Bose for the Society.

Shri J. N. Mitra for the Employees Association.

AWARD

By Notification No. LR-2(253), dated 9th June 1950, Government of India, Ministry of Labour, referred the industrial dispute between the General Assurance Society Ltd. Calcutta and its workmen in the General Department in respect of the matter specified in the Schedule annexed therewith for adjudication. Notices were issued to the parties for filing the statements of claim by the General Assurance Society (General Department) Employees Association (hereinafter called the *Employees Association*) as well as the General Assurance Society Ltd. (hereinafter called the *Assurance Society*) and on the completion of the pleadings the following issues were framed by my learned predecessor in office on the 31st July 1950; but on account of his elevation to Labour Appellate Tribunal, no date could be fixed for evidence.

Issues

- (1) Was Shri K. G. Chandra wrongfully dismissed, and if so, should he be reinstated.
- (2) Were the persons mentioned in Annexure C of the statement of claim, wrongfully retrenched or dismissed, or victimised, and are they entitled to reinstatement.
- (3) What is the effect of the agreement between the management and the General Secretary of the Federation of Mercantile Employees Unions, copy of which is attached to written statement.
- (4) Should there be any orders for security of service in the sense that no employee shall be discharged without just cause and until he has had an opportunity of meeting the charges against him.
- (5) Are there any existing standing rules and do they need revision.
- (6) Has Shri K. N. Dangali been guilty of such conduct that this Tribunal should make an order for his removal, and has this Tribunal the power to do so.
- (7) Has there been favouritism shown to the following persons and if so what orders should be passed concerning such favouritism:
 - (1) Shri Upendra Nath Chowdhury

- (2) Shri Amulya Ghose
- (3) Shri Brojendra Roy
- (4) Shri Nagen Banerjee
- (5) Shri Jatin Chowdhury
- (6) Shri Sunil Chatterjee
- (7) Shri Phanindra Lahiri
- (8) Shri Sukesh Ranjan Chakraborty & others.
- (8) Should the basic pay and the Dearness Allowance of the employees be revised
- (9) Is there any definite scale for the payment of annual bonus and if so, should it be revised.
- (10) Should the Company introduce a system of gratuity or pension scheme in addition to their Contributory Provident Fund.
- (11) What should be the hours of work in the establishment.
- (12) Is the Association entitled to recognition, and should any order be made in that behalf.
- (13) Should there be any order for the provision of drinking water and canteen facilities, tiffin room, medical aid and latrines.
- (14) Should any order be made regarding the adequacy or otherwise of accommodation in the office.

On my taking over, the case was put up soon after but both sides wanted times for summoning witnesses, and the case was therefore, adjourned and came up for recording evidence in the last week of September 1950. The hearing continued almost from day to day with occasional break which was necessitated either owing to the non-attendance of some of the witnesses or for the disposal of Bank disputes which were heard outside Calcutta in other States. At long last the evidence came to close on the 14th December 1950 and the arguments followed at some length from the 15th to 20th December 1950.

Now in order to appreciate the discussion of the questions involved and proper understanding of the specific cases of dismissal and retrenchment of about four dozen employees of the Assurance Society as well as several abstract propositions in regard to Security of Service, revision of basic salary and Dearness Allowance, the introduction of the system of Pension and gratuity, annual bonus and some other benefits and amenities for the employees, it is necessary to give a resume of the pleadings as well as the general background of the case. In this respect the case of Employees Association put succinctly is that the employees of the General Assurance Society organised themselves into a Trade Union as early as in June 1947 (under Registered No. 1091) and started general Trade Union activities in order to safeguard the interests of the employees but due to the various repressive measures adopted by the management, the Association became moribund by the end of 1948 and that the Association was re-organised early in 1949 but this time again their activities were disliked by the Manager who started victimizing the employees and discharged some of the prominent members of the Association without assigning any reason or on flimsy grounds. The Employees Association lodged a protest against such unwarranted discharge of the employees and a general meeting of the Employees Association was convened on the 24th November 1949 when a charter of demands was formulated and the same was forwarded to the management. The situation, however, did not improve and the management started more vigorous campaign against the employee members of the Association by demotion, discharge and *en masse* dismissals including the President, Vice-President and the Secretary of the Association in order to crush the Trade Union movement. It was further alleged that the discharge of a large number of employees in two successive instalments was aimed at throttling the Employees Association at the very inception and that Shri K. N. Dangali, the Acting Manager of the Assurance Society actuated by bad labour practice adopted a repressive policy to discharge the old employees and recruit new hands out of his relations and friends. The Association thereupon approached the employers (through the Director-in-charge) but no quarter was given to the Employees Association for discussion in order to avoid further tension and the Employees Association was driven to seek their grievances redressed through Government machinery. The Secretary of the Employees Association also enumerated some of the grievances in the form of a memoranda in the statement of claims and asked relief on all questions referred to in the Schedule attached with the Reference.

On the other hand the General Assurance Society through their Manager Shri K. N. Dangali traversed almost all the contentions raised by the Employees Association and pleaded that the trouble between the employer and the employees was mainly due to the leaving of Shri L. M. Mitra, the previous Manager and Underwriter of the Society, because Shri L. M. Mitra after leaving the Society's service had joined another Insurance Company in Calcutta and according to the confidential reports received by the Society Shri Lohit Mitra (brother of Shri L. M. Mitra) and several clerks of the Society, who had been appointed by Shri L. M. Mitra during the tenure of his office, planned to leave the Society's service and join Shri L. M. Mitra's new Insurance Company after removing and tampering with the confidential records and files of the Society. It was asserted that the Society became suspicious of their loyalty on account of their close connection and intimacy with Shri L. M. Mitra, the erstwhile Manager and consequently terminated the services of Shri Lohit Mitra, brother of Shri L. M. Mitra, from the Society's service. The discharge of Shri Lohit Mitra further worsened the situation and no less than eight clerks in a body resigned and joined Shri L. M. Mitra's new Company. This naturally added to the suspicion of the Society which had to replace 14 other clerks having suspected them working against the interests of the Society. The Society's representative pleaded that in one case the dismissal was occasioned on account of gross insubordination and insolence on the part of that employee towards the Manager, and that the case of some of the employees was covered by a settlement negotiated upon by Shri Jitendranath Banerjee, Secretary of the Federation of Mercantile Employees Union on behalf of the discharged employees and Shri K. N. Dangali, Manager of the Society, and as such was not triable by the Tribunal, and in case of seizing jurisdiction at any rate, the agreement was binding upon those persons. As regards the transfer of Shri K. G. Chandra, Secretary of the Employees Association, the Assurance Society pleaded that the same was made in the interest of the Society's work and the employee in question was sent to Cawnpore as an experienced hand on better emoluments with an increase of Rs. 25 in his pay. As he persistently refused to comply with the said order he was dismissed on the basis of insubordination amounting to misconduct. Regarding the discharge of Shri Subodh Chandra Mukherjee, Vice-President of the Employees Association and several others the Society's plea was that they were temporary hands and were appointed for the purpose of clearing accumulated work and as after some time they had become surplus to the requirements of the Society, they were discharged. As regards Shri Lohit Mitra, the Society also joined issue with the Association and stated that as the Society lost confidence in him, he was discharged and moreover that he was an officer and not a workman and as such his case was not triable by this Tribunal. It was further stated that a good number of the discharged employees were subsequently re-employed by the Society and the plea of vindictiveness and bad labour practice urged by the Employees Association was untenable. Regarding Shri B. C. Mukherjee it was urged that he was an officer and his case could not be considered by this Tribunal and as the Society lost confidence in him for committing serious indiscretion and misdemeanour the Society discharged him. In regard to the other questions raised by the Employees Association for the determination of the Tribunal, viz., security of service, revision of scale and Dearness Allowance, annual bonus, introduction of graded scale of pay, provision of gratuity and pension scheme and the formulation of Standing Orders regarding the conditions of service as provided in the Standing Orders Act, recognition of the Association and the provision of adequate facilities for drinking water, medical aid, latrine, etc., the Society repudiated the allegations of the Employees Association and stated that the present arrangement was proper and adequate and the Society was not prepared to make any further improvement in view of the financial position of the Society.

The summary of pleadings given above might furnish a fair index to the contentions raised yet the genesis of the trouble which culminated into this reference must also be traced at the outset for the elucidation of the points at issue. In this respect it is noteworthy that the conditions of employment of industrial workers although were recognised in India much earlier say in the middle of the last century yet comprehensive legislation for regulating labour was taken up more assiduously in 1947 when the previous legislation was almost overhauled and Provincial Governments were also enabled to make rules under the labour legislation already enacted in conformity with prescribed standards and conditions. The history of labour legislation also reveals that the Government of India in the Labour Department actually drew up a five year programme of legislative and administrative measures for the amelioration of labour conditions in India and the Industrial Disputes Act of 1947 formed a link in the chain of the contemplated measures. It is therefore not improbable and without significance that the employees of the General Assurance Society should have organised themselves in June 1947 into a Trade Union. This averment of the Association was denied by the Assurance Society, but shall have to be accepted as evidenced by the sworn testimony of

Shri K. G. Chandra and furthermore by the printed forms of the Association and the Registered No. 1091 printed over them which was subsequently changed into No. 1937 on the re-organization of the Employees Association in 1949. Shri K. G. Chandra in his Cross-examination has furthermore given the names of office bearers of the erstwhile Union; and it appears that the Union was formed in 1947 but did not make any headway and became defunct, as urged by the Association. The present Union styled as 'General Assurance Society (General Department) Employees Association' was admittedly re-organized in August 1949 as evidenced by the application for registration of Trade Union (Form A) with enclosure Schedule I (names of office bearers), Schedule II (Rules), Schedule III (liabilities and assets) a copy of the proceedings of the meeting, dated 11th August 1949 and the Registrar of Trade Unions, West Bengal's Note (Ex. 17), dated 30th August 1949 to the effect that the application together with constitution, etc., of the General Assurance Society (General Department) Employees Association was received for registration and the consequent certificate of Trade Union No. 1937, dated 24th September 1949 (Ex. 12). This time the Assurance Society was also duly informed regarding the formation of the Employees Association as borne out by Ex. BB, (a copy of letter addressed to Shri B. L. Jalan, Director-in-Charge) and Ex. AA, a certificate of posting receipt of another letter, dated 29th October 1949 addressed to Shri B. L. Jalan, Director-in-charge. This correspondence thus furnishes positive proof of the fact that the Association had begun its work in right earnest and approached the management for effective recognition involving periodical negotiation and discussions on outstanding questions of dispute with a view to smoothen the relations between the employees and the authority. This fact is further supported by the Society's own documentary evidence (Ex. 12)—Certificate of Registration of Trade Union and Ex. 16 (Annual Return prescribed under the Indian Trade Union Act 1946 for the year ending 31st March 1950 on behalf of the General Assurance Society Employees Association, 13 Dixon Lane, Calcutta, No. 1937, dated 29th July 1950). Consequently the sequence of events given above amply testifies that Trade Union activities on the part of employees was afoot as early as in 1947 and it was futile for the management to deny that they did not become aware of the formation of the Union. It is just possible they may not have taken much notice of these activities as it generally happens in the case of all public reformatory movements which have to pass through several stages viz. non-chalance, ridicule, repression and ultimate recognition by the administration. The only other observation which I would like to make in these preliminary remarks before embarking on the issues is with regard to the status of the Society which factor is also primarily to be kept in consideration in the adjudication of all the points embodied in the issues more especially those relating to the improvement of the lot of the employees. In this connection the deposition of Shri B. L. Jalan, the Director-in-charge, is worthy of note. He has deposed that he has been in this Society in the capacity of a Director-in-charge since 1943 and his work mainly relates to the investment of money of the Assurance Society and to expand the business. He is also a holder of Power of Attorney on behalf of the management; and is not only concerned with this Society but has several other undertakings to perform. Of course he has not disclosed in his deposition the magnitude of the Society's finance but he has admitted that the Society has extensive business and has opened some of its branches outside India and that the Society is making good progress in general and is being treated as a first class Company by the foreign authorities. He has however stressed that the General Department, Calcutta, was not making any profits and there has been rather a set back in the General Department and he would expect the Calcutta office to make more business. In view of this statement of the highest dignitary of the Society I would treat the Society as a first class Insurance Company while dealing with the issues for the purpose of adjudication.

Issue No. (1).—This Issue deals with the case of Shri K. G. Chandra, Secretary, General Assurance Society (General Department) Employees Association, who was alleged to have been wrongfully dismissed on account of his Trade Union activities. He joined the Society in June 1945 in the days of Shri L. M. Mitra, the erstwhile Manager and Underwriter of the Society and was appointed in the Fire Department and according to his allegation he was not supplied with any copy of service rules. His case briefly is that he was one of the founder Members of the Employees Association which was started in early 1947 and was registered in June 1947 and that the Association did not meet any opposition on behalf of the management in its inception but the trouble started soon after Shri L. M. Mitra went to England and America for some months and in the course of his absence Shri K. N. Dangali, the present Manager acted as Manager. The trouble further aggravated when in October 1949 Shri L. M. Mitra left the Company's service and Shri Dangali succeeded him; and by the discharge of Shri Lohit Mitra, brother of Shri L. M. Mitra, from the service of the Society, whereupon some other clerks were also discharged from service and he (K. G. Chandra) in the capacity of Secretary of

the Employees Association moved the Regional Labour Commissioner on their behalf. It was further alleged that the Society looked with disfavour on his Trade Union activities and demoted him by transferring his service from Calcutta Risk Section to Bombay Risk Section and placed him under a new hand. He complied with the order under protest but he was subjected to all sorts of pin pricks relating to petty matters and warnings emanating from the Manager's office day in and day out (as evidenced from the copies of the orders Exs. D and E) and ultimately a notice was served upon him to the effect that he was transferred to Kanpur and was ordered to proceed within five days time relinquishing his charge here. Shri K. G. Chandra proceeded in giving out the details of his case that on the receipt of the transfer order he approached the Manager and said that his father was ill and he too was suffering from dysentery and was thus unable to proceed to Kanpur but the Manager did not condescend to give ear to him and asked him to leave the office and submit in writing as to what he had to say. He accordingly submitted a written application (Ex. F), which document in view of certain controversy over the question as to whether this transfer amounted to demotion as alleged by the employee or it tended to promotion by virtue of increased emoluments of Rs. 25 as alleged by the employer, may well be reproduced.

EX. F.

13, Dixon Lane,
Calcutta: 24th November 1949.

To

The Acting Manager and Underwriter,
General Assurance Society Limited,
Calcutta.

Dear Sir,

In reply to your letter of the 22nd instant with instructions for instantaneous transfer to Kanpur Branch, I submitted a reply on the same date stating grave reasons therein which prevents my leaving Calcutta.

You will no doubt appreciate that my reasons are important and serious and deserve your sympathetic and adequate consideration.

Besides, I cannot of course agree to any reduction of my total earning effecting adversely my service terms, which will be caused by transfer to Kanpur. And on top of this maintenance of a second establishment will put on additional financial burden on me. Thirdly, in a highly crowded industrial town like Kanpur where even a local person cannot find a residence, it will be impossible for me to secure one; eventually I shall be thrown in the street. I am an old and loyal employee and certainly deserve more sympathetic treatment than this drastic action will entail.

For these above grave reasons, I request you earnestly to revise your order of transfer, although obedient to your instruction, I handed over charge, with great mental worries and, of course, under protest.

Thanking you.

Yours faithfully,
SD: Kanai Gopal Chandra.

Then followed some correspondence between the subject and the Manager, as evidenced from Exs. H-1 to H-10 ranging from the 23rd December 1949 to 3rd April 1949, resulting in the dismissal of Shri K. G. Chandra which forms the subject of this issue. The perusal of this correspondence reveals that Shri K. G. Chandra in his letters Exhibits H-1, H-3, H-5, H-7, H-9 and H-10 tried to make out that his transfer to Kanpur would virtually reduce his emoluments and owing to his own illness and that of his father he was faced with one crisis after another and as such prayed for leave on medical grounds and for reconsideration of the transfer order. He also tried to convince the Manager regarding the *bona fides* of his statement about his illness and asked him to visit him personally to ensure that he was actually bed-ridden and that furthermore his father's serious illness had also brought him to prostration which required much longer period of careful living as advised by the doctors. He furthermore proposed to attend the office even in that bad health provided he was allowed to undertake a little less exacting work as owing to the bad condition of health there was every chance of a relapse and that his shifting to Kanpur might endanger his life. At the close of the correspondence Shri Chandra took another turn and pleaded that normally he would have gone to Kanpur but owing to his bad health he could not do that and when alternative arrangement

had already been made it was in the fitness of things that he should be allowed to resume his duties at the Calcutta office. But on receipt of unfavourable reply he placed his case ultimately before the Regional Labour Commissioner (Central). On the other hand the counterpart of the correspondence as evidenced from Exhibits H-2, H-4 and H-6 indicates that the management was not prepared to grant him any further leave and Shri K. G. Chandra was directed to report for duty at Kanpur within 3 days of the expiry of the leave already granted. The closing part of this correspondence on the side of the Society shows that the management became conscious of petitioner's ill health and called upon him to produce a fit certificate before he will be allowed to resume his duties and that his observations regarding the responsibility for his life in case he was sent to Kanpur was wholly irrelevant and could not be taken into consideration. The Medical Certificate enclosed with Shri Kanai Gopal Chandra's letter dated 9th February 1950 was also taken exception to by the management with the remark that the same was not clear and the doctor should further state as to which date the leave was recommended and that on the production of proper Medical Certificate the question of the extension of leave could be considered. It was on the 8th March 1950 that Shri Kanai Gopal was informed by the management that for want of proper Medical Certificate his application for leave was lying undisposed of and moreover as he had not reported for duty at Kanpur as directed, he was to be considered absent from duty and was informed to reach the office within 3 days of its receipt. Shri Kanai Gopal Chandra in reply to this stated that he was awaiting Regional Labour Commissioner's move and all that he could request the management was to be good enough to allow him to work in Calcutta till such time as the Regional Labour Commissioner's decision be made available. The management thereupon treated him as an absentee and dismissed him from service.

Now the question for determination is as to whether the non-compliance with the transfer order on the part of Shri K. G. Chandra showed such insubordination or disregard of duty as to merit dismissal. The correspondence which has been summarised as well as quoted in extenso between the subject and the management at least makes this much very clear to me that the Manager under whose signature the replies were sent on behalf of the management to Shri K. G. Chandra had become conscious that the latter was not keeping good health. This is evident from one of the letters quoted above in which the management demanded a certificate for fitness from him before joining the duty. The Medical Certificate attached with some of the applications for leave also go to show that Shri Chandra was suffering from acute dysentery and must have greatly run down in health. I have read and re-read some of this correspondence carefully and the impression which it left on my mind was that the management was adamant in not budging from their stand that they had taken with regard to Shri K. G. Chandra's transfer and similarly Shri K. G. Chandra under forced circumstances was not prepared to leave Calcutta in that shattered health. His offer to give him some work of less exacting nature even in his bad health showed his anxiety that he had no mind to lose the job. Without absolving him from the responsibility which lay upon him to abide with the decision of the management in the matter of transfer, I think that his labour activity was not the only reason which stood in his way to proceed to Kanpur but his own ill-health and his father's illness also contributed to his refusal not to comply with the order and to refer the matter to the Regional Labour Commissioner (Central) when he found that the management was not at all prepared to revise the transfer order. The other inference which can be easily deduced from this correspondence is that the management had scant respect for the health of their old employees if it actually did not treat the question of revising the transfer order with utter contempt.

It was argued on behalf of the management that the transfer of Shri K. G. Chandra was made in place of one Shri P. K. Das who had resigned and the vacancy was to be filled up by an experienced man and hence Shri Chandra was sent to Kanpur on a special allowance of Rs. 25 and not as a punishment to him as urged by the other side. It was further argued that the letter sent by him disclosed that he was not prepared to go to Kanpur at any cost and he flouted the authority of the employers which amounted to insubordination and the dismissal had become inevitable. This argument, however, was controverted by the other side and it was maintained that the transfer was actuated in the spirit of bad labour practice and was insisted upon notwithstanding the broken health of the subject who was an old employee. Reliance was placed on some of the directions laid down by the All India Industrial Tribunal (Bank Disputes) in the matter of transfer wherein it was directed that in the case of registered Bank Employees Unions when transfer was contemplated the decision shall be communicated to the Union as well as to the employee concerned and that so far as the members of the subordinate establishment are concerned they should not ordinarily be transferred except with their

concern. Taking into consideration all these circumstances, my opinion is that so far as possible a transfer outside the State in which the language of the State is not spoken may well be avoided but this by itself cannot take the form of a general rule and the transfers which are necessitated by the exigencies of the services in the interest of the work shall always remain in the discretion of the employer. Applying this principle to the facts of this case as observed above, I am inclined to think that in the case of Shri K. G. Chandra his transfer was conceived not exactly in the interest of the work. I can well understand the insistence put by the management for compliance with the transfer order in the interest of discipline which should never be under estimated by the employees but on the basis of the material placed on the record I think that the transfer order was not motivated in the interest of the Society's work but was actuated by a desire to remove Shri K. G. Chandra from Calcutta on account of his labour activities which he had initiated in 1947 and was consistently promoting as an active worker and office bearer of the Employees Union until the time of his dismissal. It seems very likely that the management who had no sympathy with the employee on account of his labour activity did not move even by his subsequent illness and the order was insisted upon rigidly than it was necessitated by the exigencies of the situation. To my mind, if the management had been a bit benevolent in the case of Shri K. G. Chandra they could have easily asked him to resume his duties at Calcutta and the transfer should have been delayed by the time that he was found in better physical condition to move out of Calcutta. For all these reasons I am satisfied that it is a fit case in which interference is called for. In the result I direct that Shri K. G. Chandra will be reinstated in his post at Calcutta which he was holding at the time of his dismissal and he will be paid all the emoluments for the intervening period. The direction shall be given effect to within one month from the date when this award becomes operative.

Issue Nos. (2) and (3).—These two issues relate to the alleged wrongful retrenchment or dismissal of several persons mentioned in Annexure C of the statement of claims filed by the Employees' Union and can be conveniently dealt with together; and furthermore, the case of affected persons mentioned in Annexure C be considered in different categories for the purpose of elucidation. In this respect the representatives of both sides agreed to divide the list of 48 persons mentioned in the Annexure C into three parts:

- (i) 15 discharged persons who had simultaneously made a representation to the Regional Labour Commissioner (Central) protesting against the order of discharge, and in the course of negotiation authorised Shri J. N. Banerjee, Secretary, Federation of Mercantile Employees' Union to represent their case before the Regional Labour Commissioner (Central) by an authority in writing (Ex. V);
- (ii) Ten persons whose services were terminated by the Manager one after the another and whose case was argued individually. They, as mentioned in the Annexure C, are as follows:
 - Shri Prasad Kumar Chakravorty (15)
 - Shri Atul Chandra Roy (16)
 - Shri Lohit Mohan Mitra (17)
 - Shri Subodh Chandra Mukherjee (18)
 - Shri Sailendra Nath Banerjee (28)
 - Shri Amar Nath Chatterjee (35)
 - Shri Sankar Das Chakravorty (37)
 - Shri Profulla Kumar Dey (41)
 - Shri B. C. Mukherjee (47) and
 - Shri K. G. Chandra (48);
- (iii) The remaining 23 were admittedly re-employed by the management and as such their case was not to be pressed seriously.

Now Shri K. G. Chandra (48) formed the subject of a separate issue and has been dealt with. Regarding the 15 persons shown under category (i) the Association's case as disclosed by Shri K. G. Chandra, Secretary of the Association, briefly is that when Shri L. M. Mitra, the previous Manager and Under-writer of the Society, left the Society's service and Shri K. N. Dangali, the present Manager came into office, the relations between the Society and the Association became strained and Shri Lohit Mitra (brother of Shri L. M. Mitra) was the first victim of this tension who was discharged from service; whereupon some 7 or 8 Sections-in-charge clerks made a protest against Shri Lohit Mitra's discharge order. The Society, however,

gave deaf ear to the protestations of those clerks and they had to resign as well. This caused further deterioration in the mutual relations and the restrictions were placed on the movements of the employees by the Society and they were furthermore dissuaded from exchange of views amongst themselves in the tiffin period. This state of affairs went for a couple of months when all of a sudden in June 1949 these 15 persons were discharged by the Manager without assigning any reason. They approached the management in the first instance for the redress of their grievances but as no response was forthcoming they moved the Regional Labour Commissioner to interfere in the matter. In the course of negotiations before the Regional Labour Commissioner these discharged persons sought the assistance of Shri J. N. Banerjee, Secretary of the Federation of Mercantile Employees Union to represent them and authorised him to bring about the conciliation between the management and the employees. But as the compromise effected was detrimental to their interests they had to go once again to Regional Labour Commissioner (Central) with the complaint that the authority vested in Shri Banerjee by the discharged persons was not absolute and as he had not consulted his constituents before arriving at a settlement with the management, he had failed to perform his duty properly and the agreement was therefore invalid and was not binding upon them. Shri Sunil Kumar Bose, who was examined in this connection by the Association furthermore stated that after giving the authority of 13th June 1949 (Ex. V) to Shri Banerjee, he had addressed a letter (Ex. W) dated 20th June 1949 to Shri J. N. Banerjee on his own behalf and that of 12 other colleagues who had signed Ex. V, informing him (Mr. Banerjee) to consult them at every stage of the conciliation proceedings and particularly before any decision was arrived at. Shri Sunil Kumar Bose, however, admitted that no specific authority in writing was given to him by his other colleagues who signed Ex. V for making any alteration or addition in the original authority of 13th June. The Association in their detailed supplementary statement of 8th August 1950 (at pages 3 and 4) while referring to the question of these 15 persons have stated that the compromise was unsatisfactory in so far as it excluded 12 out of 15 men and only secured reinstatement of 3 employees and as such they felt that the settlement was made behind their back and consequently the employees in a body turned the decision down and even the three employees whom the Company agreed to reinstate also could not see their way to accept the compromise which included a mischievous condition providing for their transfer to any of the Company's branch or to any other concern managed by the same Managing Agents. It was further alleged that the compromise was arrived at between Shri J. N. Banerjee and the Society on the 29th of July 1949 and the affected employees lodged a protest to the Regional Labour Commissioner (Central) on the 9th August 1949 but they had not till then received any direct information from Shri J. N. Banerjee as to the terms of the compromise and they had to move in the matter only on a reported information received from the R.L.C.'s office. On the other hand the Society's case in regard to these 15 discharged persons as disclosed by Shri K. N. Dangali in his deposition at page 6 was that they were discharged on the ground that there was an apprehension of removal of documents as well as of the tampering of records of the Society by some of the employees who had entered into an intrigue with Shri Lohit Mitra (brother of Shri L. M. Mitra). It was further alleged that on their lodging a complaint before the R.L.C. (Central) a settlement was arrived at as borne out by Agreement deed (Ex. 10) dated 29th July 1949 and the discharged persons were duly represented by Shri J. N. Banerjee who was authorised by them by an authority (Ex. V) and as such they are barred from agitating the matter further. Shri K. N. Dangali in his statement furthermore deposed that in pursuance of the Agreement (Ex. 10) all these persons were called upon for being taken back into service and to receive their compensation as required by the terms of the agreement; but they did not choose to even give any reply.

Now the execution of the Agreement (Ex. 10) is not denied and the main contention of the Association is that Shri Jiten Banerjee did not consult his constituents as required and had thus abused his power and had betrayed the discharged persons in bringing about the reinstatement of three employees only out of 15 discharged persons. The execution of the authority (Ex. V) was also not denied and it purports to have been duly signed by 12 persons including Shri Sunil Bose. In the absence of any evidence that Shri Sunil Bose was authorised to write another letter (Ex. W) wherein he had called upon Shri J. N. Banerjee to consult the constituents at every step it has to be seen as to whether Shri J. N. Banerjee's powers were subsequently restricted and furthermore as to whether Shri Sunil Bose was competent to demand a change in the unequivocal authority given by all to Shri J. N. Banerjee. In this connection Shri Banerjee, who was examined by the Society, has deposed that he was approached to represent the discharged employees and he did study and followed their case thoroughly. He however adopted the policy of giving and taking as is generally done in amicable settlements and that he duly informed the persons concerned about the terms of the Agreement on the

day it was signed. The witness further deposed that he also informed the persons concerned that so and so mentioned in Ex. 10 will be reinstated and others will be granted unemployment relief and that they should make themselves available for the implementation of the terms within a week's time. In Cross-examination to Shri J. N. Mitra, the authorised representative of the Association, Shri Banerjee stated that in the course of conciliation negotiation when the settlement was made one or two persons out of the lot of discharged persons were accompanying him and that Shri Sunil Bose was the principal mover and that he had no such idea that the compromise arrived at by him on behalf of the employees was not acceptable to them. The witness was subjected to almost scathing cross-examination by Shri Mitra but I do not find that he perjured or gave any vacillating reply, although to one or two questions he only stated that he did not remember that he had received a copy of the letter dated 8th September 1949 alleged to have emanated from the office of the R.L.C. Calcutta; or he had any talk with Mr. Mitra in the Tripartite Conference. He is a double graduate and is a member of the Council of Indian National Trade Union as well as Secretary for the Association of Employees Union which is a central organisation of all Mercantile and Commercial Trade Unions. The discharged employees admittedly approached him in his capacity as General Secretary of the Federation of Mercantile Employees Union and placed their confidence in him. Shri K. G. Chandra in his statement, a part of which is quoted above, has frankly stated that the discharged persons "sought the assistance of Shri J.N. Banerjee and authorised him to bring about the conciliation between the management and the employees." Now if the conciliation arrived at does not suit one party it would be most unreasonable to back out of it and more especially in the absence of any evidence that the authorised person had acted *mala fide* against their interests or had colluded with the other side. It appears that those who were not reinstated under the terms of the agreement prevailed upon others also not to accept the service and the fire of dispute was kept ablaze. Shri J. N. Mitra arguing on behalf of these discharged persons further emphasised that the settlement arrived at by Shri J. N. Banerjee on behalf of the discharged persons was vitiated inasmuch as a clause of transfer was also incorporated which was galling and the discharged persons refused to go back in service because there was every likelihood of their having been transferred some time afterwards. He accused Shri Jiten Banerjee for conducting the case half-heartedly and watering down the claims of the discharged persons.

Reliance was placed on certain observations made by the Hon'ble Judges of the Calcutta High Court in the matter of an application in connection with the Indian Paper Pulp Company Ltd., and some other Companies dated 24th September 1948 at page 44 wherein Chakravarti J. while dealing with the question of Industrial Tribunals powers observed that the Industrial Disputes Act is not an Act for setting up a special forum for the adjudication of the contractual rights of employers and workmen and what a Tribunal is required to do upon a Reference is not to give a decision upon the law but to make an award. The learned Judge further observed as follows:

"It is clear that the 'adjudication' for which such a dispute is referred to a Tribunal is not an adjudication on the contractual rights of the parties, but an adjudication as to what would be a fair and reasonable settlement of the claims, irrespective of the contract. It is to be noticed that one of the methods of settlement provided for in the Act is settlement by agreement, brought about by the Conciliation Officer or the Board. An agreement can obviously include terms in modification of the existing contract and may also provide for cancellation of orders made, though they were not made in excess of the contractual rights."

It is not intelligible as to how the above observations can be of any avail to the petitioners. It has rather been suggested that one of the methods of settlement provided for in the Act is settlement by agreement brought about by the Conciliation Officer and this was exactly the method adopted by the parties who were duly represented by recognised representatives in this case and a certain agreement was reached; and as such the argument is manifestly fallacious. It appears that Shri Mitra wanted to urge that under the Act the Tribunal is not bound by any agreement as to embody in its award the terms and conditions of the agreement which in its opinion are not fair and reasonable. This is, however, another aspect of the case and I have no dispute with the principle that the Tribunal has the power to look into the validity of the compromise and find if the same was vitiated by any legal or factual defect but the Tribunal's finding after all can be based only on the evidence adduced in this connection and other data existing on the record. In the light of the sworn testimony of Shri Jiten Banerjee and in the absence of any evidence that he colluded with the Society or failed in the discharge of his duties,

it is almost impossible for the Tribunal to brush aside the settlement arrived at sheer on the plea that it was not acceptable to the discharged persons and because a certain condition of transfer was also entered therein. Their Lordships of the Calcutta High Court in this very judgment furthermore have pertinently observed that the "words of a statute must still be the only guide as to what the Legislature really intends". The subject under discussion moreover in these cases before the High Court was a certain contract between the employer and the employees which is not the case here. Now there is a clear rule under the Industrial Disputes (Central) Rules 1947 which ordains "that a party appearing by a representative shall be bound by the acts of that representative" *vide* Rule 31. In the face of this statutory provision it is idle to urge that the Tribunal should impose its own decision after going through all the evidence with regard to that compromise. For all these reasons I am of the considered opinion that the agreement (Ex. 10) is binding upon those discharged persons and the issue must be decided against them. It may further be pointed out that Shri Panna Lal Bose, learned Counsel for the Society, in the course of arguments made it clear that the Society notwithstanding the protest of these persons and their attitude which they had adopted was still prepared to abide by the terms of the agreement *viz.* to take back the three persons who were to be reinstated according to the terms and to compensate others as laid down in the terms of the agreement. Accordingly it is still open to them to avail the benefit of the compromise. Awarded accordingly.

The second batch of discharged employees whose cases are to be considered individually comprises of 9 persons namely:

- Shri Prosad Chakraborty (15)
- Shri Atul Chandra Roy (16)
- Shri Lohit Mitra (17)
- Shri Subodh Mukherjee (18)
- Shri Sallendra Nath Banerjee (28)
- Shri Amarnath Chatterjee (35)
- Shri Sankar Das Chakravorty (37)
- Shri Probodh Kumar Dey (41) and
- Shri B. C. Mukherjee (47).

Prasad Kumar Chakraborty (15)—He joined the Society's service on the 8th September 1944 and was also given a formal letter of appointment but no conditions of service were specified in that letter. He was transferred to Bombay but refused to comply with the order and was discharged from service on the 2nd July 1949. His grievance is that his dismissal was brought about on account of his Trade Union activities and that he could not comply with the order of transfer because he was not consulted with regard to the proposed transfer to Bombay. It was urged on his behalf that he was a junior typist and there was no dearth of junior typists in Bombay and the transfer was conceived in order to harass him. Shri Prosad Kumar Chakraborty, who came into the witness box deposed that when the order of transfer was conveyed to him he protested against the order of transfer on the same day and made a representation (Ex. Y-3) as well as addressed a letter to the Managing Director (Ex. Y-7) whereby he received a communication dated 29th June 1949 to the effect that his refusal to obey the order of transfer would justify dismissal. He accordingly addressed another letter on 30th June 1949 wherein he explained that he was not provided with a copy of the bye-laws and standing orders relating to the conditions of service and persisted in not going to Bombay. Shri J. N. Mitra arguing on his behalf admitted that the tenor of his correspondence with the Manager was not happy and that in the flush of youthful enthusiasm he might have exceeded the limit of decorum but that by itself should not have merited his dismissal. I have looked into that correspondence and have no hesitation to say that Shri P. K. Chakraborty adopted a defiant attitude from the very beginning unlike Shri K. G. Chandra. I need hardly add that the labour legislation aims at the protection of the employees security as well as conditions of service but it in no way gives them a license to brow-beat the management or to intimidate them. Some code of decorum is always necessary in the interest of employment and it will be more conducive to promote the better relations between the employee and the employer. Normally transfers from one State to another are discouraged as observed by me in the case of Shri Kanai Gopal Chandra but it cannot be allowed that the authority should be flouted in the manner in which Shri Prosad Kumar Chakraborty took it upon himself to pit against the management. He has admitted in his statement that he has been re-employed in the Indian Trade & General Assurance Co. by Shri L. M. Mitra and the question of his reinstatement does not arise. The same was also not pressed by Shri J. N. Mitra

it was urged that those who have been dismissed without good reason should be compensated by some retrenchment relief. I have no dispute with the principle but his case is not one of retrenchment but dismissal on account of misconduct and I am not prepared to consider his case for any relief or compensation.

Atul Chandra Roy (16).—He joined the Society as an expert on the 1st September 1949 and his services were terminated after a couple of months. He did not make his appearance much less to have come into the witness box to state his case. Shri J. N. Mitra argued on his behalf that he too was discharged on whimsical grounds without affording any opportunity to explain and at the same time averred that the Society had engaged him and put him over Shri K. G. Chandra as well as Shri S. C. Mukherji in order to humiliate them. It is neither alleged nor urged that he was a member of the Employees Association or was associated in any Trade Union activities. Shri J. N. Mitra as observed above, rather dubbed this gentleman as the Manager's favourite who was selected to boss over Shri K. G. Chandra and Shri S. C. Mukherjee, the office bearers of the Employees Association and as such it is unintelligible how his case was being taken up by the Employees Association. Shri Mitra, however, faintly argued that according to the Association's rules he had to protect the interests of all the employees. In view of the contradictory position taken up by Shri Mitra and in the absence of any direct evidence that Shri Atul Chandra Roy was discharged without just cause, I do not think any interference is called for in his case.

Lohit Mohan Mitra (17).—He joined the Society's service in 1944 as a Chief Clerk and was discharged on 23rd February 1949 as his elder brother Shri L. M. Mitra, the previous Manager, left the Society's service and he (Lohit Mitra) was suspected of his fidelity to the Society. This is correct that no evidence has been led by the Society in support of the plea that he had actually committed any act of omission or commission whereby his loyalty to the Society was suspected, yet as borne out by the history of the whole trouble between the employer and the employee given above I do not think that any case has been made out for his being taken back in the Society's service. He has moreover been re-employed and has joined his brother Shri L. M. Mitra's new Insurance Company and as such his case for reinstatement was not pressed by the Employees Association. It was however, urged that in the absence of any cogent proof against him it was a case of victimization and that the subject was entitled to some compensatory relief. Shri Lohit Mitra has not come into the witness box although he was available and his discharge was not brought about owing to any Trade Union activities on his part but on the plea that his retention in Society was prejudicial to the interest of the Society's cause as his elder brother Shri L. M. Mitra, the previous Manager had left the Society and had employed some of the General Assurance Society's people into the new Insurance Company. This circumstance coupled with the fact that several clerks left the Society's service and joined Shri L. M. Mitra amply goes to show that a tussle had already begun between the erstwhile Manager Shri L. M. Mitra and his successor Shri K. N. Dangal and under such state of affairs, I am of the opinion that the Society was justified in terminating the services of Shri Lohit Mitra because no commercial concern particularly Insurance Company can possibly afford to have a person closely related to the previous Manager who had launched litigation against the Society and there was every likelihood of the divulgence of business secrets from one side to the other. In the result I am constrained to hold that no case has been made out for awarding any relief to Shri Lohit Mitra as well.

Subodh Chandra Mukherjee (18).—He joined the Society's service in May 1949 as a Section-in-charge but no formal letter of appointment was given to him. According to his statement he was given a permanent job and was appointed as Section-in-charge of the Re-insurance Section by virtue of his long insurance experience. He came into the witness box and subjected himself to cross-examination of the other side and deposed that he is an M.Sc. of the Calcutta University and had 15 years experience at his back when he joined the Society and that he had already served more than one Insurance Companies as well as Bankers' Traders. He further stated that his relations with the management were very cordial but after the formation of the Employees Association he also became a active member of the Union and was selected as Vice-President. It so happened that the general meeting of the Employees Association was convened at the premises of the Society's office on the 11th August 1949 under his Presidentship and copies of the proceedings were sent to the management as well as to the Regional Labour Commissioner (Central). This brought about reaction in the mind of the Manager against him and some days after he received a warning (Ex. N) dated the 24th August 1949 wherein he was made to understand that reciprocal statement up to June 1949 which was to be prepared by him was not completed by that time and it was found that little progress had been made in that and therefore

the work was to be allotted to other persons. He was made to note that negligence could not be tolerated. Shri Mukherjee's case is that as the allegation made against him in Ex. N was frivolous he was upset and he made an endorsement on the same communication in the following words:

"These are frivolous allegations only to prepare a ground for my discharge. I had no such knowledge or instructions as alleged in your letter.
SD: SCM"

The matter was reported to the Regional Labour Commissioner (Central) as borne out by Ex. O, dated 26th August 1949 and a few days after i.e. on the 1st September 1949 Shri P. Dey was placed over him although he was a new man. It however so transpired that he fell ill and applied for leave on the 4th November 1949 and while he was on his sick bed he received the order of discharge dated 7th November 1949 whereupon he again moved the Regional Labour Commissioner (Central) by a communication (Ex. R-12) dated 21st November 1949. Shri Mitra arguing on his behalf contended that Shri S. C. Mukherjee was an elderly man and was senior in length of service to all others who were discharged *en masse* on the 7th November 1949 out of whom a good number was subsequently absorbed by the management and re-employed but Shri S. C. Mukherjee who happened to be the office bearer of the Employees Association and had presided over the meeting of 11th August 1949 when the demands of the Association were formulated, his case was not considered. It was further stressed that in point of fact a large number of employees were discharged in order to make a show of surplus hands and only those remained out of employment eventually who were connected with the Trade Union activities of the Association and Shri S. C. Mukherjee was one of them. Shri Mitra vehemently urged that his was a case of bad labour practice and the plea of his having been a temporary hand was untenable inasmuch as a gentleman of Shri Mukherjee's experience and calibre was not to be employed for the clearance of any accumulated work and the job that he was given viz. Section incharge clearly indicates that he occupied a permanent post. It was further urged that in the absence of any Standing Orders and bye laws, no letters of appointment were being issued by the Society and as such it was difficult to draw a line as to who was a permanent hand and who was a temporary one and this factor should also be considered along with the circumstances under which Shri S. C. Mukherjee was first appointed. Shri Mitra concluded that the management has not seen their way even to bring on the record the copy of the Circular whereby no less than 28 persons were *en masse* discharged and subsequently all were re-employed excepting those who were connected with the Trade Union activities of the Employees Association and this circumstance also speaks of their *maia fides*. On careful consideration of all the facts and circumstances of the case, I have no hesitation in coming to the conclusion that Shri S. C. Mukherjee was victimized on account of his Trade Union activities; and his was a case of bad labour practice otherwise a man of his qualifications and previous experience could not have been shunted off in this perfunctory manner. I would, therefore, direct his reinstatement within one month from the date when the award becomes effective and he will be paid his full emoluments for the past three months only in view of the shortness of the period of his service.

Sailendra Nath Banerjee (28).—He was holding the post of an Assistant Secretary of the Association and joined the Company's service on the 1st July 1949. Shri K. N. Dangall in his statement at para. 4 has deposed that Shri S. N. Banerjee had considerable insurance experience at his back when he joined the Society but as several employees had become surplus to the requirements of the Society he too was discharged along with others by a Circular letter dated 7th November 1949. Shri S. N. Banerjee had participated in a previous strike and had admittedly been an active member of the Employees Association. His services were terminated with several others who were discharged *en masse* on the 7th November 1949 on the plea that they were surplus to the requirements of the Manager. But Shri K. N. Dangali in his statement admitted that good many of them were subsequently re-employed. The plea of surplus accordingly runs counter to the other argument "that the *en masse* discharge of more than two dozen employees was not conceived in the spirit of bad labour practice." It was urged on behalf of the Employees Association that all these employees were discharged in order to give blow to the Employees Association's prestige and it was wrong to say that such a large number of employees had become spare to the requirements one fine morning. The argument was further stressed that in point of fact this wholesale discharge was actuated by malice against the Association and those who agreed to work in consonance with the repressive policy of the Manager and were cowed down by his iron hand were again taken back into the service while others who did not submit to the arbitrary attitude taken up by the Manager were not absorbed and had to seek their grievance redressed through the Labour Ministry. Finally it was

urged that Shri S. N. Banerjee is one of those employees who did not see his way to bend his knees before the Manager not out of any arrogance or defiance but in principle and took his stand more on fair practice and security of service than on flattery and had to remain out of employment.

The Society has not brought on the record a copy of the Circular of 7th November 1949 and Shri K. N. Dangali, who was examined in Court, did not explain the position further excepting that no less than 28 persons became surplus hands and were discharged. This plea, however, was negatived by the other argument that the same persons were re-employed which indicates the hollowness of the plea inasmuch as it is absurd to say that 28 persons became surplus on 7th November 1949 and the Society required the services of about two dozen out of them some days after. The point needs no further elaboration and the plea advanced by the Society must be repelled. In the result I direct that Shri S. N. Banerjee will be taken back into the service of the Society and will be paid all his emoluments for the past two months only in view of the short duration of his service and in consideration of all the circumstances. This order shall be carried out within one month from the date when the award becomes effective.

Amar Nath Chatterjee (35); } The three employees were discharged along
Sankar Das Chakraborty (37): } with others by the Circular of 7th November 1949
Profulla Kumar Dey (41): } on the plea that they had become surplus to the requirements. The plea of the Society that 28 persons had become surplus has already been fully discussed in the cases of Shri S. C. Mukherjee (18) and Sailendra Nath Banerjee (28) and need not be pursued in the case of these employees. The same argument applies that the plea was untenable for the simple reason that soon after out of the 28 discharged persons a good number was re-employed and this knocks the bottom of the plea that they had become surplus. In view of the fact, however, that these three employees have already been re-employed somewhere else the question of their re-instatement does not arise. At any event they are entitled to the retrenchment relief because their services were dispensed with all of a sudden without giving them an opportunity to explain and furthermore the Circular letter of 7th November 1949 which contains the alleged plea of surplus has not been brought on the record. This circumstance indicates that there may have been some other reason which prevailed with the management for the retrenchment of the persons *en-block* and consequently I am of the opinion that they are entitled to retrenchment relief. But the period of their service falls short of one year and they have already been paid one month's salary in lieu of notice I am afraid no such relief can be made available to them.

B. C. Mukherjee (47).—Shri Mitra in the course of arguments also wanted to dilate upon his case but in view of the fact that my learned predecessor at the time of framing the issues had already passed an order relating to Shri B. C. Mukherjee I am bound by that and as such I was unable to take up his case. The aforesaid order is reproduced as under:

"In view of my decision in the award of the West Bengal Banks, the question relating to Shri B. C. Mukherjee who was a high officer of the company, cannot be entertained as officers do not come within the purview of the Industrial Disputes Act.

F. Jeejeebhoy."

The only other persons included in Annexure C are those who were initially discharged but have admittedly been re-employed by the Society and as such their cases were neither pressed nor can be considered. This disposes of Issues No. 2 and 3.

Issue No. (4).—It would be better to reproduce the issue as it stands in order to confine the discussion within the ambit of the same. It reads as follows:

"(4) Should there be any orders for security of service in the sense that no employee shall be discharged without just cause and until he has had an opportunity of meeting the charges against him."

The security of service has been the subject of discussion and deliberations in the I.L.O. Conventions and in tripartite labour conference convened for the purpose of promoting relations between the labour and the employer and it is hardly necessary for me to make any general survey of the subject, which forms the main plank of labour legislation. Shri Mitra on behalf of the Employees Association simply urged that although the All-India Industrial Tribunal (Bank Disputes) have laid down certain principles with regard to the conditions of service and termination of employment and the same are applicable in the case of Insurance Companies also under the Banking and Insurance Companies Act LIV of 1949; no attention has been paid by this Assurance Society in this connection and

the security of service of the employees of the Society appears to be not at all the concern of the employer with the result that the employees always feel panicky with regard to their employment and some basic rules be laid down that no employee shall be discharged without just cause and until he has had an opportunity of meeting the charges against him. Shri Mitra furthermore averred that there are no bye laws or rules exist in this Society and if the Manager has formulated any bye laws as stated by him in his deposition, the same have never been notified to the employees and for all practical purposes the Manager himself is an omnipotent under the non-interfering Director. It was accordingly stressed that in this state of affairs the security of service for the employees was all the more of vital necessity. Shri Mitra in this connection also referred to the statement of Shri Jalan, the Director-in-charge, who was examined on behalf of the Employees Association, wherein he has stated that he would very much like that there should be security of service and so far his view was concerned the same could be expressed on the nature of the recommendations made in that respect. In view of this assurance and that of Shri Panna Lal Bose, learned Counsel for the Society that no employee would be discharged or dismissed without having been given an opportunity for explanation; it may not look essential to lay down any definite rules for the security of service. But the assurance referred to above appears to me more of general nature than a solemn undertaking and I think that the matter should not be shelved off on some such vague admission. It is time that the security of service should be ensured by certain definite rules in order to obviate any arbitrary and unwarranted dismissal without giving reasons in writing and affording opportunity for explanation to the person concerned. The Employees Association in their amplified statement at page 10 have made certain suggestions which are conceived on the lines of collective bargaining. But the issue as framed is rather a simple one and I do not think I am called upon to enter into this problem on the basis of collective bargaining as the same should not be treated in isolation but should form an integral part of the economic plan and national scheme of industrial development and must be treated on higher level. At any rate what seems absolutely necessary is not to leave the matter sheer on the cautious assurance of Shri Jalan namely, that whatever he had said was his personal view and the same could be expressed on the study of the recommendations and that of Shri Bose that exception will be made in the case of temporary hands and in cases of retrenchment. The demand as put in the issue itself does not appear to me extravagant in any way and rather conforms with the fundamental rule of service that no one shall be sacked without having an opportunity of explaining himself to the charge. Consequently this demand is allowed that no permanent employee of the Assurance Society or one who had put in more than six months service shall be liable to discharge or dismissal without issuing to him a charge sheet and after having been heard and due enquiry by the competent authority of the Society.

*Issue No. (5).—*This issue hardly requires any elaboration in face of the admission of Shri K. N. Dangali that no standing rules exist as required by the Industrial Employment (Standing Orders) Central Rules but the Society had framed certain bye-laws which are generally observed by the Manager in dealing with the conditions of service, as well as at the time of recruitment of employees, and termination of their services. No copy of these alleged bye-laws however was brought on the record and as such I have not been able to persuade myself to accept that some guiding rules have been in force and are being observed in the Society. In the result my finding is that no standing rules are existing and the latter part of the issue "do they need revision" does not arise. The question, however, does not resolve thereby and it would be furthermore necessary to direct the Society to frame standing rules for the conditions of service of their employees in consonance with the provisions of the Industrial Employment (Standing Orders) Act, 1946 as early as possible and not later than three months from the date when this award becomes operative. I should furthermore, in passing say that on the question of service code, the Employees Association had formulated a charter of demands, but they have not led any evidence, otherwise I might have concentrated on certain points in controversy. Accordingly for want of proper evidence and under the procedure laid down in the Industrial Employment (Standing Orders) Act of 1946 (which requires the certificate of the Labour Commissioner on the submission of the copies of the proposed Standing Orders and the objections of the Employees Union). I think, I am not competent and have not got the data before me to lay down the rules regarding the conditions of service of the employees of this Society. I have therefore left it to the Assurance Society to frame the Standing Orders as directed above and get them certified under the Standing Orders Act, so that both the parties should know their respective position. At present, the Society is working without any Standing Orders or bye laws and this position cannot be allowed to continue any longer and is certainly not in conformity with the provisions of the Standing Orders Act, which has been enacted with the object

of defining the conditions of service and thereby promote the relations between the employer and the employees in industrial undertakings as well as commercial concerns.

Issue No. (6).—This issue relates directly to the conduct of Shri K. N. Dangali, the present Manager and Under-writer and the relief sought by the Association was for his removal. The latter part of this issue is as to whether this Tribunal has power to do so and consequently the objection was raised on behalf of the Society that Shri K. N. Dangali, who is the present Manager, was not before this Tribunal as a respondent and an enquiry into his conduct was not in order. Shri Panna Lal Bose vigorously contended that even the employer under whose pay he is has no power to remove him without charge-sheet, and he was unjustifiably dragged into this controversy. Shri J. N. Mitra, the recognised representative of the Employees Association did not make any argument in direct reply to the preliminary objection and only made certain general observations to the effect that some punishment be meted out to one who caused so much misery to the employees and that the conduct of Shri K. N. Dangali in discharging arbitrarily a large number of employees and recruiting others, some of whom had come from Burma, from where Shri K. N. Dangali had come was sufficient to take action against him. The Employees Association representative who otherwise conducted the case, I would say, with ability and thoroughness, appeared to me while making his arguments on these issues more of a labour leader making speech on the platform than arguing in Court. He went to the length of saying that he could pardon Shri Dangali for some acts but he was not prepared to countenance his acts in discharging the employees *en masse*. The tone and the argument was taken exception to and must be deprecated. But in view of the fact that the matter had already been embodied in the issues and some evidence was also led by both sides I allowed him to make argument. The main contention raised on behalf of the Employees Association was that Shri K. N. Dangali who was an Advocate of the Burma High Court on the partition of the country came to Calcutta and as he happened to be an office bearer of Burma Refugees Association he had soft corner for refugees and in order to employ them he shunted off some of the old employees. The evidence led in this connection reveals that only two persons who could be said to have shifted from Burma were employed and the allegation was found wholly incorrect that any one of the employees engaged by Shri Dangali was his relation. The other significant factor which cannot be lost sight of is that Shri Jalan, Director incharge, in his deposition expressed full confidence in his Manager and in all probability Shri Jalan was not unaware of the policy which was being carried on by Shri Dangali. If Shri Mitra's argument be allowed to prevail then it would come to that one day Shri Mitra will come forward with an allegation that Shri Jalan also should be shunted off from the management. It was a different matter that Shri Dangali may have been given a free hand but that rather shows the confidence of the employer. The other argument advanced by Shri Mitra was that the Employees Association was responsible for greater good and peace between the employer and the employees and as such was responsible to call upon the employer to take action against the Manager. This absolutely stands on a different footing that the Association should approach the employer than to seek the verdict of the Court without making him a party or calling upon him to explain certain matters. It is against the basic principles of law and all canons of justice that any action be taken at the back of the man sheer on the general allegations which were raised in the statement of claim and the matter was not included in the items mentioned under the Schedule of the Notification of Reference No. LR.2(253), dated 9th June 1950. The question with regard to the conduct of Shri K. N. Dangali moreover was introduced in the statement in the form of argument and evidential and as such it appears that my learned predecessor deemed it proper to put it in the form of a issue but advisedly the latter part was also added 'whether this Tribunal has any such power to deal with this matter.'

As observed above no relative argument was advanced on this latter part of the issue and a reference was only made to certain observations of Jute factor award which have no bearing on the facts of this case and are of no avail. am therefore of the opinion that in the first place this Tribunal has no power to enter into this discussion and secondly, on the basis of the evidence what has been brought on the record I do not think any case has been made out that Shri K. N. Dangali was guilty of such conduct that the Tribunal should make an order for his removal. The issue is accordingly decided against the Employees Association.

Issue No. (7).—This issue relates to some eight persons to whom favouritism is alleged to have been shown by Shri K. N. Dangali, the present Manager and Underwriter, in bringing them into the Society's service. No cogent evidence in each individual case was led to establish that any favouritism was shown to the aforesaid persons in this connection and furthermore in view of the finding given

in Issue No. (6) above this issue loses its significance, if it had any, and must be decided against the Employees Association.

Issue No. (8).—This issue relates to the basic pay and Dearness Allowance of the employees and the demand is for the revision of the basic pay as well as Dearness Allowance. Shri Mitra, the learned representative of the Employees Association dwelt on this issue at some length and maintained at the very outset that the basic salary and the amount of Dearness Allowance given to the employees of the General Department at Calcutta was less than that which was being enjoyed by the Bombay Branch of the Society. It was further contended that the Society was associated with the Bengal Chamber of Commerce and the scale laid down by that Chamber should necessarily have been adopted by the Society. The next argument in this connection was that the cost of living have admittedly gone high as evident from the current cost of living index published by the Finance Ministry and this also calls for immediate attention of the Society to raise the basic pay of their employees. Finally, it was urged that according to the Central Pay Commission Report the basic pay was to be stabilised to 160 per cent. from the year 1939 and the same must have now gone up and the Society should not remain static in their existing scale of basic pay and Dearness Allowance. The financial position of the Company was also discussed in this connection and reliance was placed on the last year's Balance Sheet viz. 1949. Shri Mitra with reference to the figures given in the Balance Sheet contended that although the net profit was shown only Rs. 50,000/- but in point of fact several items of expenditure were mixed up with other departments of Life Assurance by manipulation of figures and furthermore the employer was making new investments in other concerns with the result that the employees of General Department suffered owing to the diminishing amount of profits. The Employees Association made certain suggestions also in this connection in their supplementary statement at page 14 wherein the grades and scales of pay for adoption by the Society were given. These suggestions manifestly deal with details which in the first place do not form a part of the Issue which only says as to whether the basic pay and Dearness Allowance be revised; and secondly in the absence of any comparative data and evidence on this subject I cannot talk up the one sided suggestions which even fall short of the comparative existing grade and scales of other companies.

Shri Mitra in the course of arguments also filed a chart wherein the names of all the employees, dates of joining, initial pay, present salary, grade, increments, etc. have been given and argued that the basic salary in the General Department was inadequate and should be revised. Shri Bose, Counsel for the Society, objected to the admissibility of this document and contended that there was no occasion for the other side to admit or deny the correctness of these figures because this document was not brought on the record in evidence, and that the Society cannot afford to revise the basic structure of the salary as the present basic pay scale was adequate and in some cases they were paying more than other Companies and that their finance does not allow to revise the same. On behalf of the Association it was also argued that the Society was making investment in other concerns with the result that the profits and the balance in hand were not favourable in this connection. I am conscious that the accounts are sometime manipulated to show less profits and as such, it is not always safe to base the conclusion on the face value of the Balance Sheet. But without any cogent evidence or expert evidence probing into all the accounts, the Balance Sheets shall have to be acted upon. The argument that the Society should not invest money in other concerns, moreover, does not hold water because if new concerns are being started, new recruitment of employees must also be there and to restrict the employer from starting other concerns in order to save money for the sake of the present employees of the General Department does not appear to me a sound argument. The simple question is whether the present salary as compared with other Insurance Companies is inadequate and revision of scale is called for. Looking at the rates given in the chart submitted by the Employees Association themselves, I am of the opinion that no case has been made out for the revision of the basic salary inasmuch as the lowest salary to the clerical staff in this Society is Rs. 95/- which cannot be held to be inadequate as compared with scales of Government servants.

Coming to the question of Dearness Allowance, the main contention of the Association was that the Society was paying less Dearness Allowance in Calcutta as compared with their Bombay branch. This was denied by the other side and it was maintained that the minimum Dearness Allowance was Rs. 45/- for the first 100 and 20 per cent. more over Rs. 200/- salary which compares favourably with other Insurance Companies. In view of the fact that the cost of living index has admittedly gone up in Calcutta as well as generally and in the absence of any comparative

be furnished by the Society, I am of the opinion that a flat rate increase of Rs. 3/- be allowed to all the employees drawing up to Rs. 500/- as basic pay and this increase will come into force within one month from the date when the award becomes operative. Ordered accordingly.

Issue No. (9).—This issue relates to annual bonus and it reads as follows:—

“(9) Is there any definite scale for the payment of annual bonus and if so, should it be revised.”

Shri Mitra arguing on behalf of the Employees Association contended that in this Society annual Pujah bonus was being paid to the employees as an *ad hoc* payment without any scientific basis whereby the bonus should be co-related with the profits of the Company. The argument was further stressed that the payment of the present Pujah bonus was more or less left at the will of the employer and the question should be settled on certain principle viz. that either the bonus be related to the dividend given as laid down by the All India Industrial Tribunal (Bank Disputes) or with profits. On the other hand Shri P. L. Bose on behalf of the Society maintained that no dividend has been paid for the last four or five years to the shareholders of the Company and the proposition of connecting the bonus with the profits was more for the industrial undertaking than for insurance companies whose nature of work stands on a different footing than mills, factories and such industrial concerns. The learned representative of the Society further averred that the profit for the last year was Rs. 50,000/- only and in case that the bonus had been co-related with profit the amount of Pujah bonus paid to the employees must have dwindled but the Society in the interest of the employees has been giving them an *ad hoc* payment at the time of Pujah festival and that this arrangement was more conducive to the benefit of all concerned and needs no revision.

The question of giving bonus has been the subject of several awards and their lordships of the All India Industrial Tribunal (Bank Disputes) have also made pertinent observations under the heading ‘nature of bonus’ in Chapter XV of their award but I do not think that the question should detain me to the discovery of a formula for the grant of bonus to the employees of this Society either linking it to the dividend paid or the profits earned by the Commercial concerns inasmuch as Shri Mitra became conscious after hearing the argument of the other side and although he did not exactly concede but tacitly did not press the demand further. In consideration of all the circumstances and in the absence of any evidence or any sound reasons that in the case of Insurance Companies the bonus can be linked with the profits of the Company I am of the opinion that the present system of annual Pujah bonus should stand. The result is that no revision is called for in this connection.

Issue No. (10).—The demand of the Employees Association in this issue is for introducing a system of gratuity or pension scheme in addition to their Contributory Provident Fund. Shri Mitra arguing on behalf of the Employees Association urged that the Provident Fund scale was also not to the mark and the same should be revised and furthermore the system of gratuity be introduced. It was further urged that an accredited member of the Association be also allowed to sit in the Board of Trustees. Shri Panna Lal Bose on behalf of the Society opposed the demand and argued that the Provident Fund system was already in force and that he was not aware of any award having been given whereby the pension or gratuity system was also introduced over and above the Provident Fund system excepting in case of some old hands where gratuity was allowed as they could not get Provident Fund benefit. The Counsel maintained that in this Society all employees were receiving the benefit for Provident Fund and that was more conducive to their future welfare.

Several principles have already been laid down on this question by the Royal Commission of labour and by the Government of India Labour Investigation Committee as well as by the learned judges of the various Tribunals but the one salutary principle to my mind is that every case must be judged on its own merits with reference to the particular employees in question and no scheme could be accepted to be of universal applicability. In the case of pension my personal view is that a good number of employees do not reach the age of superannuation in the course of service and in the commercial concerns it is hardly of enduring benefit to the employees. Shri Mitra also did not press the demand of pension seriously and it is extremely doubtful whether any such scheme is feasible to be introduced in the Society without probing deeply into their financial position. The only question therefore is for the consideration of gratuity system and the most forcible argument in favour of this is that after a certain length of period the employee should have the benefit of grant of a lump sum to face the prospect of impending starvation on account of unemployment. Gratuity is one of the forms of retirement benefits like the pension and is granted in appreciation of long and faithful service and has also been regarded as a kind of compensation for the termination of the service of an

employee. But the question is whether more than one form of benefits can be allowed or a case has been made out for the introduction of gratuity system over and above the one of Provident Fund which admittedly is in existence in this Society. No legal precedent was cited at the bar where Provident Fund scheme existed and gratuity scheme was also introduced. Generally speaking I think cases are not wanting where Provident Fund which is based on the contribution of the employee with addition of employer's contribution would not satisfy the demand for the recognition of the long and faithful services of an employee and that can be rewarded only by way of gratuity. On study of the point, I find that the question has been discussed in more than one awards and the necessity of granting a gratuity has been recognised in several awards hitherto made in disputes arising in industrial concerns of good financial position. As this Assurance Society has been treated by me as a first class on the Director in-charge Shri Jalan's own admission, I see no good reason why not to grant the benefit of this scheme to its employees. The Association has not made any specific demand in regard to the rate of this compensation. In some awards scale of gratuity has gone to a maximum of 15 months salary or wages *vide* awards between (1) Ford Motor Company of India Ltd. and its staff; and (2) General Motors India Ltd and its workmen. In some cases, the scale was however lowered and in case of less than five years service no gratuity was granted. This is correct that the employer has a right to expect fairly long period of service on the part of the employee before the latter should claim gratuity in recognition of his honest service; it is however pertinent to note that in formulating a graduated scale one factor should be kept in view that no one should be deprived of this benefit after putting in at least five years service for reasons other than gross misconduct such as wilful insubordination, conviction on charge of theft, fraud or dishonesty and taking part in or inciting illegal strikes. Accordingly for those who may have put in full 5 years of continuous service or over I direct the Society to allow gratuity on the following scale:

- | | |
|--|---|
| (1) On the death of employee while in the service of the Society | One month's salary or wages for each year of continuous service subject to a maximum of 15 months salary or wages be paid to his heirs, or assigns. |
| (2) On retirement from service after completion of 15 years of continuous service | 15 months' salary or wages. |
| (3) On termination of service by the Society for reasons of physical or mental disability to continue further in service | One month's salary or wages for each completed year of service but not more than 15 months salary or wages to the disabled employee. |

Of course no employee will be entitled to gratuity for the period less than 5 years service. The salary or wages for the purpose of calculating gratuity shall be the average salary or wages exclusive of allowances during the 12 months next previous to death, retirement or termination of service as the case may be. The Company will, however, be at liberty to grant gratuity in excess of the above in its discretion for recognition of long meritorious service.

Issue No. (11).—The Employees Association demand in this issue is for the curtailment of hours of work although the wording of the issue is:

“(11) What should be the hours of work in the establishment.”

Both the representatives of the parties stated that the present working hours of the Society are from 10 A.M. to 5-30 P.M. with half an hour interval for lunch. Shri Mitra pleaded for the curtailment in this period and also complained that the interval was not ordinarily allowed. In view of the fact that working hours of almost all the Government offices are from 10 to 5-30 P.M. with an interval of one or half hour, I do not think that any change is called for and I hope that the Employees Association must also be alive to the fact that in this transitional period, country expects more work from everybody and this should not be grudged. Of course if the interval is not being allowed, I would direct the Society to see that nobody is restrained in the enjoyment of that short period for having their lunch or recreation as they desire.

Issue No. (12).—This issue relates to the recognition of the Employees Association and the demand is that the Association is entitled to recognition and that order be made in that behalf. In this connection I may say at the outset that the history of the Employees Association which has been traced in the preliminary remarks goes to show that the Association is well alive and kicking and has already put itself on firm ground and as such it is not extravagant on their part to ask for the recognition by the employer but the difficulty is that for granting recognition to a certain Trade Union, the legislature has already made special provisions by amending the Trade

Unions Act 1926 under which no Trade Union can be allowed to approach the Industrial Tribunal for its recognition straightaway in supersession of the provisions of Section 28 (b) of the Trade Unions Act. A labour Union has in the first place to apply with certain conditions enumerated in Section 28 (d) for the purpose of recognition and have to undergo certain procedure which is prescribed in Section 28 (e) in the matter of the application for recognition. Registration of a Trade Union by itself is not sufficient for claiming recognition and the Union has furthermore got to satisfy the labour Court that it is representative of all the workmen of the industry under whom they are working. The labour Code under Section 23 Sub-section (3) has also the power to investigate the matter further in order to ascertain whether the proportion of the total number of workmen satisfies the certain percentage prescribed by the Government in that behalf. Accordingly it does not seem advisable for me to take it upon myself to adjudicate upon the matter which very appropriately be adjudicated by the Labour Court. It may, however, be noted that Shri Bose on behalf of the Society in the course of arguments made it clear that if the Employees Association be duly recognised under the Trade Union Act the Society shall have no objection in recognizing the association and I think in view of this undertaking the Employees Association has more to comply with the requirements of the Trade Union Act than to seek relief in an indirect manner from this Tribunal. The issue is answered accordingly.

Issue Nos. (13) & (14).—These two issues relate to the demand for the provision of drinking water, canteen facilities, tiffin room, medical aid, latrines, as well as regarding the adequacy or otherwise of accommodation in the office. Shri Panna Lal Bose on behalf of the Society in the course of arguments and Shri K. N. Dangali in his deposition stated that the provision for drinking water is adequate and in summer rather ice water is supplied. With regard to the canteen facility and medical aid, it was stated on behalf of the Society that both are available in the same building: where the offices of the Society are located but no separate arrangement on behalf of the Society could be made for want of space and furthermore the existing arrangement cater to the necessities of all persons working in the building known as Surajmull Nagarmull building. It was also pleaded that the Society has not been able to build its own building and under the present circumstances no separate arrangement is practicable. Regarding the tiffin room it was stated that there is a room of 15'×15' size with a water tap and larger accommodation is not obtainable on account of the shortage of space. In regard to latrine the Society's representative also urged that the arrangement already existing was quite adequate and the arrangement namely three latrines and two urinals adequately meet the requirements and for want of any open space it was not possible for the Society to extend this facility.

Shri Mitra on behalf of the Employees Association, however, bitterly criticised the existing facilities and maintained that although the arrangement mentioned above do exist but they are in name only and fall short of the requirement of more than 100 clerks. In the course of arguments it was also disclosed that the premises of the Society's office consist of one big hall for the clerical staff, four rooms for officers, two lavatories, one for officers and one for staff and one tiffin room and the annual rent payable by the Company to the proprietor of the building is Rs. 1,700/- per mensem. In the light of these facts I am of the opinion that the arrangements with regard to all these demands could hardly be called adequate for a fairly large number of employees but the acute shortage of accommodation in these days and the other obvious difficulties with regard to making new arrangements, the demands can not be pressed so vigorously and bitterly as the Employees Association has chosen to do. I do not mean by this observation that the employer is not called upon to improve the matters but what I mean to say is that for want of space, the amenities cannot be extended by any additional provision. In the circumstances I leave it to the good sense of the management with the direction that they would spare no pains and expense in improving these existing provisions in regard to the social amenities for the comfort and good health of their employees. I need hardly add that the comfort given to the employees and the amelioration of the conditions of service go a long way to maintain the happy and cordial relations between the employer and the employees and a practical gesture of goodwill and sympathy towards the staff furnishes an index of the wise and benevolent outlook of the management.

In conclusion I am constrained to add that during the course of hearing of this case I have noticed that a feeling of antagonism if not bitterness exist between the employer and the employees of this Assurance Society and to my mind it does not auger well. It is time that both should realize that the interest of employer and employees are intrinsically bound up together and apathy on the part of the employer and non-co-operation on the part of the employees would ultimately prove to the detriment of both. The purpose of labour legislation no doubt is to foster, promote and develop the welfare of the wage earners in order to improve their working conditions and to advance their opportunities for profitable employment but

that by itself hinges on the prosperity and progress of the Society which can be achieved not by sheer barren antagonism and obduracy but by mutual co-operation and the spirit of amity as well as sincerity. It is hoped that this piece of advice shall not go unheeded.

Now, therefore, this Tribunal makes its Award in terms aforesaid, this the 19th day of January 1951.

K. S. CAMPBELL-PURI,
Chairman, Central Government
Industrial Tribunal, Calcutta.

AWARD II

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

6 ESPLANADE EAST, CALCUTTA-1.

Before Shri K. S. Campbell-Puri, B.A., LL.B., Chairman.

Reference No. 166 of 1950.

PARTIES:

The General Assurance Society Ltd., Calcutta,

AND

Their employees in the General Department.

In the matter of an application under section 33A of the Industrial Disputes Act (as amended) by the Secretary, General Assurance Society (General Department) Employees Association, Calcutta, for the deduction of the entire amount of advances previously granted to the employees from the annual Pujah bonus and stoppage of annual increment; and also application under section 33 of the said Act by the Society for permission to discharge 12 of its employees.

APPEARANCES:

Shri J. N. Mitra for the Employees Association,

Shri Panna Lal Bose, Counsel, for the Insurance Society.

AWARD

These are two applications under Sections 33-A and 33 of the Industrial Disputes Act, 1947 (as amended), one emanating from the side of the employees and the other from that of the employer. They were preferred almost simultaneously in the course of the proceedings of the main Reference No. 166 of 1950 between the General Assurance Society Ltd., Calcutta and its workmen in the General Department. In view of the fact that the two applications appear to me to be cross claims the same can conveniently be disposed of by one award.

The allegations made in the application under Section 33-A of the Industrial Disputes Act (as amended) are two-fold:

- (1) That the Assurance Society have stopped the usual annual increment to the employees and have thus violated the provisions of Section 33-A with regard to the change in the conditions of service.
- (2) That the General Assurance Society who recently declared the usual Pujah bonus did not pay the same to the employees in full and arbitrarily made a deduction of the entire amount in some cases and a portion in others against advances previously granted to a number of their employees.

It was alleged that the said advances were granted on condition that they would be recoverable by small easy monthly instalments from the monthly salary which practice had been going on since long. It was accordingly urged that the Society had arbitrarily resorted to the method of deduction and has thus materially affected the service condition of the employees in contravention of the provisions of the Industrial Disputes Act. The application was opposed by the Assurance Society and it was alleged *inter alia* that there was no contravention of Section 33 of the Industrial Disputes Act in respect of granting annual increment to the employees as they are never declared in any specific month of the year and that the question of increment to the employees was still under the consideration of the Directors.

Replying to the other contention regarding the deduction of advances from the annual Pujah bonus, the Society denied the allegations of the Employees Association and maintained that the Company had the right to recover the advance in the manner that they deemed necessary. It was further alleged that such action on

the part of the management did not contravene the provisions of Section 33 and that the application was not entertainable.

The pleadings gave rise to the following issues:

ISSUES:

- (1) Whether the management of the General Assurance Society has withheld the yearly increment;
- (2) If so, does not this withholding of annual increment amount to a change in the conditions of service and consequent violation of the provisions of Section 33 of the Industrial Disputes Act.
- (3) Whether the management has been realising the amount of advance money given to their employees independently without deducting that amount from annual bonus in the previous years.
- (4) If so, is the management entitled to deduct this amount of advance money from the annual Pujah bonus this year.
- (5) Relief.

Some evidence was led by the Employees Association in support of their averments but the Society did not choose to produce any evidence in rebuttal. The main argument of Shri Mitra with regard to the withholding of annual increment was that the annual increments are given invariably except in cases where there was any particular charge against the employee for the withholding of increment as a punishment. It was further stressed that once the annual increment in the grade is fixed no variation can take place and it is to be allowed automatically and cannot be stopped as recognised by usages and conventions. It was, therefore, urged that the withholding of the increment had amounted to a change in the conditions of service. Finally it was urged that there are reasons to believe that the management has designedly withheld the increments in order to give lesson to the employees and it was prayed that annual increments be released forthwith with retrospective effect from the date when it fell due. On the other hand the stand taken by the Assurance Society was that in the first place there has been no change in the conditions of service for the simple reason that the increment has not been withheld but the matter was receiving the attention of the management and as such the application is not entertainable. It was further argued that annual increment does not constitute one of the terms of service and as it depends upon the discretion of the management and the delay in not granting the annual increment was not a change in the conditions of service. In view of the unequivocal statement of the Assurance Society's Counsel that the question of giving the annual increment was under the active consideration of the Society, I am of the opinion that the conditions of service have not yet altered until and unless the annual increment is actually withheld or stopped. The complaint is, therefore, premature and must be rejected. The management however, is directed to make their decision as early as possible and in no case later than one month from the date of the publication of the award.

The decision with regard to the other complaint regarding bonus, however, stands on a different footing. The Assurance Society's stand in this respect is that the amount which was declared as Pujah bonus has been appropriated as a set off in the realisation of the advances which were outstanding against the employees. Advances of loans admittedly forms a long standing practice and although the same may not be a part of the conditions of service it appears that the Society in order to help their employees have been granting them some money as a loan and the same was being realised by deduction from salary by easy short instalments. On the other hand the annual Pujah bonus has rather become a part of the emoluments as *ad hoc* payment every year and to all intents and purposes has become an expectant grant at the time of Pujah festival in order to enable the employees of the Assurance Society to meet the gala-day with some spare money in their hands. The Employees Association have examined several witnesses and have cited instances also to show that the amount of annual Pujah bonus has never been withheld or has ever been appropriated as a set off in the realisation of loans. This time departure was made at the juncture when the relations between the employer and the employee had rather become strained and they were at issue before the Tribunal on various questions materially affecting both sides. Although there is no direct evidence for drawing an inference that the Assurance Society acted *mala fide* and maliciously in order to injure the interest of the employees still it can be safely concluded that the appropriation of the annual bonus from the advance money was made at a time when the other side could reasonably infer that the same was more or less an onslaught on their privileges and their rights. The evidence stands wholly un rebutted from the side of the Assurance Society and I have no good reason to disbelieve some of the employees who came into the witness box and stated on oath that the deduction of their bonus had

seriously affected the enjoyment of the festival. In consideration of all the facts and circumstances, I am of the opinion that the payment of bonus by tradition and convention has taken the form of a definite right and although it may not be exactly one of the basic conditions of service yet it amounted to a part of the service conditions so far as the emoluments were concerned. In case that any deduction has been made without justification or good cause in the salary or the other emoluments of an employee it would certainly have been a change in the conditions of service and it makes me to think that when an *ad hoc* payment by long usage and practice has become a part of the wage structure any infringement in that must also be considered as a change in the conditions of service. Apart from this legal aspect of the question also it was not wise on the part of the management to have resorted to the appropriation of the annual Pujah Bonus as a set off in the realisation of their advance money outstanding against the employees without serving them with a notice or at least without consulting them and the plea of discretion that it was open to the management to demand the advance money at any time or to realise it in any manner was not tenable. Even if the management had any such discretion the same was not exercised judiciously and the matter cannot be left to the caprice of the Assurance Society. In the result I would allow this application so far the grant of bonus is concerned and would direct that the amount of bonus should be released to each one of the employees standing in their name and the amount deducted may well be added to the advance money outstanding against them. I need hardly add that the granting of advance money is purely a matter of discretion and if the Company grudges it, it is for them to consider not to advance in future; but whatever outstandings there are they may be realised by deduction from the salary by easy instalments as the management previously used to do. Awarded accordingly.

This is an application under Section 33 of the Industrial Disputes Act (as amended) for the grant of permission to retrench 12 persons named in the list attached with the application as follows:

- (1) Shri Sukumar Pait.
- (2) Shri Khushi Mohan Saha.
- (3) Shri Barid Baran Konar.
- (4) Shri Sital Kanta Das.
- (5) Shri Bankim Ch. Sinha.
- (6) Shri Sunil Kr. Mukherji.
- (7) Shri Amaresh Ch. Bhattacharji.
- (8) Shri Amiya Kr. Chattopadhyaya.
- (9) Shri Nanda Dulal Mitra.
- (10) Shri Umesh Ch. Banerjee.
- (11) Shri Dinesh Ch. Kar.
- (12) Shri Dipak Dey.

The reason assigned is that they were appointed temporarily to clear arrears and they have at present no work enough to keep them occupied and have thus become spare to the requirement of the Assurance Society. Notice was issued to the other side and the application was opposed by the Employees Association and it was alleged *inter alia* that the ground given by the employer for the purpose of retrenchment was not based on facts and was rather designed to injure the cause of the organisation. The Assurance Society in support of the application examined their Manager, Shri K. N. Dangall, who deposed that all the employees in question were temporary hands and they do not subscribe to the Provident Fund, nor do they possess service records. He furthermore stated that he had followed the principle 'last come first go' in coming to the conclusion for the purpose of retrenchment and consequent application for permission and that the Trade Union activities had nothing to do with his decision for making this application. The witness further deposed that there has been fall in the business this year in the Accident Section and the work had decreased and consequently in the interest of the Society, services of some of the temporary hands are to be retrenched. The witness was subjected to cross-examination on several points relating to the progress of the work and the number of officers as well as weekly and monthly returns from branches and as to whether there was any scope for absorbing these persons in some other employment of the Society, etc., and he stood the test of cross-examination yet one thing was prominent in his statement that he did not deem it necessary to consult the Sections-in-charge under whom these employees were working. He only in a general manner stated that the decision for retrenchment was made on the score of observation and on the report of the subordinate

officers with regard to the work of the office but no such report was brought on the record. Furthermore the Employees Association examined (1) Shri Nani Gopal Bhattacharyya, Accountant in the General Department; (2) Shri Kali Prosanna Chatterjee, In-charge, Foreign Treaty Section, as well as (3) Shri Malindra Nath Dutta, In-charge of the Claims Section, and they all deposed that they were never consulted in the matter of retrenchment. Shri Malindra Nath Dutta furthermore stated that the work in his Section was in arrears and the section cannot spare to afford two of his hands and still carry on the work of the Section. In cross-examination the witness stated that it would be impossible to cope with the work if two of the incumbents were retrenched as the Claims Section generally remains in arrears and this year one motor mechanic has also been employed with the result that the number which was in 1948 and 1949 was this has now reached to 7. Shri N. G. Bhattacharjee in the same strain stated that the present number in his Section should not be reduced while keeping in view the efficiency of the work in the Accounts Section and although the volume of work throughout the year was not uniform but the pressure generally increases in the months of June, July and September on account of the closing of the accounts. The third witness, Shri K. P. Chatterjee, deposed that there has been no increase or decrease in the work of the Section as compared with the work of the previous year and the work had remained on the same level but it is likely to swell on account of the new treaty arrangement. Regarding Shri Amiya Kr. Chattopadhyay who was sought to be retrenched from this Section, the witness deposed that his objection to the retrenchment of this employee was that he had been working for the last 9 months and has taken up the work thoroughly and as such cannot be spared. The witness further stated that the Manager did not consult him in the retrenchment proposed in his Section and that he had rather asked for extra hands some days back and spoke to the Assistant Manager Shri Partab Singh in that connection. There is yet another significant factor to be noted in the determination of this application viz. that out of the 12 persons in whose case permission is asked for the retrenchment, four of them, viz. (1) Shri Sukumar Pait, (2) Shri Khushi Mohan Saha, (3) Shri Bankim Chandra Singh and (4) Shri Umesh Chandra Banerjee are those persons who were dismissed along with others but were subsequently re-employed and whose cases came before the Tribunal on the original side (Reference No. 166 of 1950) already decided. Shri K. N. Dangali in his statement admitted this fact and his Counsel had no reply in the course of the argument as to how he could reconcile the two counter arguments or pleas, namely one made in the original case that a large number of employees were re-employed and the other in this application that those who are re-employed have become new entrants and as temporary hands are again sought to be retrenched. This by itself negatives the assertion that they are temporary hands and were employed for clearing the arrears. The statements of the Sections in-charge on oath furthermore diametrically run counter to the statement of the Manager. The main argument of Shri Panna Lal Bose on behalf of the Assurance Society was that the Manager was a responsible man and it was his job to look after the interest of the Society. I am aware and I have held also in some cases that the Employer should retain the right of retrenchment for good cause shown. It may be the basic right of the Employer to adjust his staff according to the requirements and he should have the right to retrench the surplus but this right must also be based on some principle, say, arising from any rationalization or modernization schemes which are likely to lead to reduction of labour force or even on a *prima facie* just cause. But the right to retrenchment on the exploded theory of 'Those who can hire can fire', and to engage and dismiss the staff at will, no longer exists under the labour legislation and the duty of the Tribunals is clear to expect at least a *prima facie* case made out before permission can be accorded. In this application as discussed above the Manager has chosen to seek permission without even consulting the Sections-in-charge and examining the position of work in hand; and the only reason assigned by Shri K. N. Dangali in his deposition was that he came to this conclusion on general observations. The word 'management' moreover connotes a body of persons who collectively manage the affairs although one incumbent styled as Manager must be held responsible for the smooth working of the administration. Manager however highly placed he may be, shall have to depend upon the persons in-charge of Sections so far statistics, figures, progress of work are concerned and in the absence of any report and in face of definite contrary views expressed by all the Sections in-charge there is no room for doubt that the application was not conceived in good faith and without probing into the reasons which prevailed with the Manager to ask for the permission of retrenchment in the course of the proceedings of the original reference; I have not been able to persuade myself to fall in line with the Counsel's argument that the view of the Manager, without making out a *prima facie* case for the retrenchment of no less than one dozen persons simultaneously should prevail *ipso facto*. I am, therefore, constrained to decline the permission asked for and the application stands dismissed.

Now, therefore, this Tribunal makes its award in terms aforesaid, this the 19th day of January 1951.

K. S. CAMPBELL-PURI,
Chairman. Central Government
Industrial Tribunal, Calcutta.
[No. LR.2(253)]

ORDER

New Delhi, the 29th January 1951

S.R.O. 163.—Whereas by Order of the Government of India, Ministry of Labour, No. LR-90(65), dated the 21st December, 1950, an industrial dispute between the Free India General Insurance Company, Limited, Kanpur and its workmen at the Head office was referred to the Industrial Tribunal, Dhanbad for adjudication;

And whereas a further industrial dispute has arisen between the Free India General Insurance Company, Limited, Kanpur and its workmen at the Head office and in Branch offices in respect of matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the further dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to refer the said dispute for adjudication to the Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act.

SCHEDULE

(1) Whether annual increments are being paid to the staff in the Branch offices and, if not, whether increments should be paid regularly and, if so, from what dates and at what rates.

(2) Non-payment of the Dear Food Allowance at enhanced rates, as allowed by the Industrial Tribunal, Calcutta, in its award, dated the 6th December 1949, published with the Ministry of Labour Notification No. LR-2(215), dated the 20th December 1949, to 24 workmen of the Company whose services were terminated before the announcement of the award.

(3) Wrongful dismissal of the following workmen, their reinstatement and payment to them of back pay:—

- (i) Shri Kali Prasanno Shukla, Typist, Head office.
- (ii) Shri Shyam Behari Awasthi, Typist, Head office.
- (iii) Shri N. D. Chakravorty, Branch office, Calcutta.
- (iv) Shri S. K. Roy, Branch office, Calcutta.
- (v) Shri K. L. Ganguli, Branch office, Calcutta.
- (vi) Shri C. C. Paul, Branch office, Calcutta.

(4) Withdrawal of the privilege of working for half-a-day only on Saturdays in the Head office and in Branch offices.

[No. LR-90(65).]
N. C. KUPPUSWAMI, Under Secy.